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ABSTRACT

Intended for parents, the manual discusses in detail the education of handicapped children, with a focus on the state of Texas. Section 1 provides basic information and covers such aspects as basic laws and regulations--including the Education for All Handicapped Children Act (P.L. 94-142), case law, and Section 504 of the Rehabilitation Act of 1973. Also reviewed are the obtaining and keeping of records, and their confidentiality. Section 2 focuses on various aspects of the child centered education process. A chapter on individual assessment covers such things as special services, the parent role, testing requirements, and independent evaluation. The individual education plan (IEP) is examined in terms of such areas as goals and objectives, writing the IEP, and the private school. A chapter on placement reviews such aspects as least restrictive setting, mainstreaming, cost of placement, residential placement, accessibility, and contracting for services. Also covered in Section 2 are the referral process and parent and child rights. The third section concerns how to deal with problems, and focuses on such areas as the discipline of handicapped students, taking legal action, and other administrative remedies. In addition, the impartial due process hearing is examined in detail. Also provided are lists of organizations for parents, state agencies, and organizations providing legal assistance in the state of Texas; a glossary; and brief summaries of important laws, rules, and regulations. Sample forms, letters, checklists, and other aids are appended to individual chapters. (DLS)

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PARENT MANUAL

EDUCATION FOR YOUR HANDICAPPED CHILD

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Published by:

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INTRODUCTION

Education is probably the most significant service our society provides to its children. New federal and state laws give parents a much greater opportunity to work with the school district in educating handicapped children.

As a parent, you have great responsibility for your children. However, you also have a great opportunity to help your handicapped child get an appropriate education. We hope this Manual will give you the information you need so that you can work with the school officials. Educating a handicapped child is more difficult than educating non-handicapped children. Therefore, the process by which decisions are made is more complicated than in regular education. This process starts when the school identifies your child as having some special problems, followed by evaluation and testing, development of the individual education plan, and finally to the placement in an education program.

This is a "how to" Manual where each one of the steps in the process is explained. Use the Manual to take notes and keep a permanent record about your child. Keep any records, copies of letters, or important papers about your child with the Manual. Use it as a reference tool for each step of the process. Important terms and words are defined in each chapter and in the Glossary. You may want to look at the Glossary before reading the Manual so that the terms and words will be familiar to you.

Sometimes the process breaks down. You may have questions that you cannot get answered. You may disagree with something the school does, or the school may refuse to provide a special service you want for your child. This Manual will tell you what you can do if you have these problems. There is also a Resources section with names of other people and organizations where you can get help.

We hope you never have to ask for an impartial due process hearing. But you do have the right to ask for a hearing if you cannot agree with the school officials. We have included a discussion about what you can do if you cannot agree with the school or if you do not believe your child is receiving an appropriate education.

We encourage you to learn everything you can about your child and to share what you know with the school officials. You may even want to share this Manual with the school officials.

SPECIAL NOTE: As the law or the rules change, this Manual will be updated by Advocacy, Inc. If you want to be placed on a list of persons who will get notice of these updates, you must send us your name and address. We will then contact you when an update is ready. There may be a small charge for the update. Please remember to send in the attached card with your name and address if you will want notice of the updates.

Acknowledgments

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The Staff of Advocacy, Inc.
August, 1979

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BASIC INFORMATION

I. Basic Laws and Regulations

II. Records

I. BASIC LAWS AND REGULATIONS

You need to know some of the basic laws, regulations, and policies about education for handicapped children. The Glossary has the legal references if you want to find a copy of the laws or policies.

Public Law 94-142 - What is it?

Public Law 94-142 is the Education for All Handicapped Children Act. In this Manual the law is called P.L. 94-142. This law guarantees every handicapped child between the ages of 3 and 21 a free and appropriate public education (FAPE). The law requires specific steps for:

1. identifying handicapped children;
2. evaluating or assessing children;
3. developing an individual education plan for each handicapped child before he receives special services;
4. deciding what education and related services should be provided to handicapped children;
5. deciding how handicapped children are to be placed;
6. maintaining education records and files for children in special education; and
7. hearings and appeals for complaints or grievances.

Section 504 - What is it?

Section 504 of the Vocational Rehabilitation Act of 1973 prohibits discrimination against any qualified handicapped person in any program or activity receiving federal financial assistance. The law says:

> "No otherwise qualified handicapped individual in the United States . . . shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The Section 504 Regulations were written by the Department of Health, Education and Welfare (HEW) to put the Vocational Rehabilitation Act into action. They tell how HEW will protect handicapped people from discrimination in HEW-funded programs.

A handicapped student is protected from discrimination in public preschool, elementary, secondary, and adult education programs. For example, if a school district provides early childhood education services to three and four-year-old non-handicapped children, it must also provide equally effective services to three and four-year-old handicapped children.

Handicapped students must have an equal opportunity to participate in their school's services and activities such as: counseling services, athletics, transportation, health services, school-sponsored clubs, student employment, and social activities.

Policies and Administrative Procedures for the Education of Handicapped Children - What is it?

The policies and administrative procedures of the Texas Education Agency (TEA) govern the day to day administration of special education programs of the school districts in Texas. This policy document can be very important to parents in understanding which children are eligible for special education services. Copies may be obtained from the regional education service centers or from the Texas Education Agency. You will have to pay for copies.

Case Law - What is it?

Case law happens when a judge reads a law and interprets it in a lawsuit. There have been a number of court cases decided about education for the handicapped. These cases talk about P.L. 94-142 and Section 504 of the Vocational Rehabilitation Act. An up-to-date list of court cases in the area of education for the handicapped can be obtained from Advocacy, Incorporated.

II. RECORDS

Your child's education records and the records you keep of conversations, phone calls, and other meetings are very important to your child's right to an appropriate public education. School officials rely on many kinds of records. These records may include:

1. teacher's notes,
2. progress reports,
3. grades or report cards,
4. achievement tests,
5. discipline reports,
6. parent contact notes,
7. assessments (which may include tests of your child's intelligence, motor skills, self-help skills, language development, and social and emotional skills),
8. reports from medical doctors (such as eye exams, hearing tests, and physical evaluations),
9. individual education plans, and
10. Admission, Review and Dismissal (ARD) Committee meeting reports.

Keeping Your Own Records

You should keep all of your child's education records together. This will help you be an informed partner in developing his individual education plan. It will also help you to make sure he gets the education services he needs.

You should also have a notebook in which you keep a written record of your phone calls, conversations, and meetings with people about your handicapped child. For each conversation or meeting, write down the date and the time of your conversation, the persons you talked with, and what the conversation was about. It is a good idea to follow up phone calls with a confirming letter, noting the date and time of the phone call and summarizing what the conversation was about. Keep copies of all letters and reports, both the ones you get and the ones you send. You may want to tape record meetings (especially ARD Committee meetings) so that you have an accurate and complete record of what happened. Appendix II-1 is a sample of how a Parent's Notebook might be kept.

You can help your handicapped child and work with the school in developing his program if you know about the laws, your child's abilities and needs, and the school's programs.

How to Get Your Child's Records

This section discusses how to get your child's records from the public schools, state schools, and community Mental Health-Mental Retardation (MHMR) centers.

Whether your child is in a public school or in a contract placement, you have a right to see the records about his identification as a handicapped child, his evaluation, and his placement in an education program. You also have the right to see the school's records about discipline, grades, progress reports and other activities that are a part of his program.

To see your child's education records, first contact the person in charge of records at the school. Appendix II-2 is a sample letter requesting records from the school. If you ask, the school must give you a list of all the different kinds of education records that the school collects, keeps, or uses to educate your child. They must also tell you where all those records are kept. It is a good idea to ask for this list since your child may have many different records in different places. You have the right to look at and review these records. If you have trouble understanding words or statements in your child's records, ask for an explanation or interpretation. The school must respond to your reasonable requests for explanations and interpretations of the records.

Sometimes parents have been told that they could only inspect the records in the presence of a particular school official and that they would have to be worked into a busy schedule. School officials may try to hurry you, or may insist that you not touch the pages. You should be pleasant, but firmly insist that you be given all the time you need to thoroughly review and understand the records.

The school must respond to your request to examine your child's education records without unnecessary delay. They cannot take longer than 45 days after you ask to see the records. If you ask to see the records so that you can participate in planning your child's individual education plan at an ARD Committee meeting, the school must let you examine the records before your ARD Committee meeting. If you ask for a due process hearing, you must be allowed to see your records before the hearing.

Ask for copies of your child's records so that you can study them at your convenience and keep them in your file. Most schools will comply with requests for copies of records. If the school says you cannot have copies, you should point out that the Rights Handbook published by TEA says you have a right to copies.

The Office of Education of the Department of Health, Education and Welfare (HEW) encourages schools to provide free copies of records. However, the school can charge you for the cost of copying your child's records so long as the fee does not effectively prevent you from inspecting and reviewing the records. If you need copies but cannot pay for them, tell the school officials this. They should then provide the copies free. The school can only charge for copying records. You cannot be charged for the cost to look for them.

Confidentiality of Records

Your child's records are private. Your consent is usually needed before they can be shown to non-school officials. The school should have a list of the names and positions of school employees who can see your child's records without your consent. School officials must show you this list if you ask to see it.

Getting Records Changed

If you think that anything in your child's education records is wrong, misleading, or violates your child's rights, you can ask the school to change them. Appendix II-3 is a sample letter requesting a change in your child's records. Within a reasonable time, the school officials must decide whether or not they will change the record. If they refuse to make the requested change, they must tell you this and let you know about your right to a hearing. This hearing may be different from the "due process hearing" mentioned elsewhere in this Manual. If the school officials decide at the hearing that the records were wrong, they must change the records and let you know in writing what changes were made. If the school officials decide at the hearing not to change the records, they must tell you that you can put your own statement in the records explaining why you disagree or why you think the statements are unfair. Your statement must be kept with your child's records. Whenever the records are shown to other persons, your statement must be shown too.

Other Records

You also have the right to see your child's education records which are kept by private schools, state schools, and community MHMR centers. Appendix II-4 is a sample letter requesting records from a state school, state agency, or community MHMR center. While there are exceptions, these records are private and usually cannot be shown to persons who are not employees of the private school, state school, or community center without your consent.

PARENT'S NOTEBOOK

Purpose: To keep an accurate record of meetings, phone conversations and letters between you and school personnel and others about your handicapped child.

Suggested format:

DATE TIME KIND OF COMMUNICATION
(Telephone, letter, meeting)

WHO:

WHAT WE TALKED ABOUT:

IMPORTANT DOCUMENTS AND RECORDS:

Example:

April 4, 1979, 3:00 p.m., ARD Committee Meeting at Smithwick School

Who: Mr. Dodd, Principal of Smithwick School; Mrs. Jones, Special Education Director of the Blank Independent School District; Mr. Lovelace, Johnny's teacher at Smithwick School; Ms. Beech, Physical Therapist; Johnny Wainright; and Mr. and Mrs. Wainwright

What We Talked About: An IEP was developed for Johnny (see IEP in file). Johnny will continue in his current placement at the Smithwick School, but will no longer receive physical therapy. As parents, we disagreed and said we thought Johnny should continue to receive physical therapy. The ARD Committee refused to agree to physical therapy because they said they didn't have enough teachers and that Johnny had low priority for physical therapy.

Important Documents:

IEP (in file)
ARD Committee Meeting Report (in file)
Tape of ARD Committee Meeting (in tapebox)

Example:

April 6, 1979, 10:00 a.m., telephone conversation with Dr. Ashworth

Who: Dr. Ashworth, Mrs. Wainwright

What we talked about: Explained ARD Committee meeting outcome to Dr. Ashworth and he agreed to write letters to Mr. Dodd and Mrs. Jones explaining why Johnny needs physical therapy to benefit from special education.

Important Documents:

Copy of Dr. Ashworth's letter (attached)

Example:

April 11, 1979, 11:00 a.m., telephone call with Mr. Dodd

Who: Mr. Dodd, Mrs. Wainright

What we talked about: Mr. Dodd received the letter from Dr. Ashworth and promises he will talk with Mrs. Jones about it tomorrow and will call me back by the end of the week.

LETTER REQUESTING RECORDS FROM SCHOOL

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal), Principal
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child), a handicapped child receiving education services at your school. Please inform me in writing about what kinds of education records you have on (name of child). Please tell me where all these records are kept, and who I should contact so I can look at them and have copies made.

I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

LETTER REQUESTING A CHANGE IN YOUR CHILD'S RECORDS

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal), Principal
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child), a student in your school. There is a statement in (name of child's) (give the name of the record. For example, "physical therapy evaluation, performed by Ms. Wormwood on June 5, 1978") which I believe is ("misleading," "inaccurate," and/or "in violation of my child's rights") because (give your reasons).

I request that you change (name of child's) (name of record) records so that they will no longer be ("misleading," "inaccurate," and/or "in violation of my child's rights").

I look forward to hearing from you soon on this matter.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

LETTER REQUESTING RECORDS FROM STATE SCHOOL, STATE AGENCY, OR COMMUNITY MHMR CENTER

(Be sure to keep a copy for your notebook)

(Date)

(Name of State School or Center)
(Address)

Dear Sirs:

I am the parent of (name of child), a child ("who has received" or "who is receiving") services from your ("school" or "center"). Please inform me in writing about what kinds of records you have on (name of child). Please tell me where they are kept, and who I should contact so that I can look at them and have copies made.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

THE CHILD-CENTERED EDUCATION PROCESS

III. Referral Process

IV. Notice of Rights

V. Individual Assessment

VI. Individual Education Plan (IEP)

VII. Placement

III. REFERRAL PROCESS

Handicapped children may come to the attention of school officials in a number of ways. For example, you may take your three-year-old child to school for the first time and tell the school officials that your child has some special problems and unique needs because he is handicapped. You have then "identified" your child for school officials as a student who may need special education and related services. Or, your child may be in a regular classroom, but the teacher thinks that he may have some special needs because he is handicapped in some way. He may then be referred for testing to find out what those problems and needs are. This is called the referral process.

A referral of a child may be made by the parent or guardian, a doctor, community agencies, other individuals, groups, or organizations that may have worked with the child or school officials. Or, referral may be made as a result of any district-wide testing or screening program.

If your child is referred, a "designated educational liaison" staff member is assigned to your child to collect information about him. This information includes such things as what grade he is in, grades, previous education programs, results of vision and hearing screening and evaluations or an updated general health history. You may also be asked to give other information you have. Once it is collected, this information is given to the Referral Committee or to the Admission, Review and Dismissal (ARD) Committee.

The Referral Committee

The Referral Committee includes your child's designated educational liaison, the school principal or someone else he chooses, a regular education support staff member, and other persons chosen by the committee. This committee should include persons who know about all kinds of programs and services that are available for your child.

The Referral Committee makes the initial decision about whether or not your child should be tested to see if he is handicapped and needs special services. The committe's decision must be in writing and signed by all members. It must be made within 30 calendar days (not including school holidays) from the time your child is referred. If the decision is that your child should be tested or evaluated, then he will go next into the assessment process. This is discussed in Section V of this Manual. You must give your written consent before your child may be assessed.

IV. NOTICE OF RIGHTS

One of the purposes of the new laws about education for handicapped children is to assure that the rights of handicapped children and their parents are protected. One way to do this is to guarantee that parents get written notice about these rights. There is a section of the regulations for P.L. 94-142 that is called "Procedural Safeguards." The law says the school district must give parents written notice and must explain all of those rights. When your child starts the referral process, the school must give you written notice about what steps it will be taking and what rights you and your child have. This information will help you understand all the steps you and the school will be taking.

Basic Information About Notice To Parents

This notice of rights must be sent to you by your child's school. It should be written in simple language, and it must be in the language you usually speak at home. If the parent cannot read or write, the school must give the notice orally or in any other way that the parent can understand. The school must do whatever is necessary to help you understand your rights. The school officials must keep written records to show that they gave you this notice.

General Notice

As soon as your child starts the referral process, you must receive the general notice that tells you about the steps the school will be taking and about what rights you have during those steps.

The school must give you the general notice about your rights when it wants to:

(1) change the identification of your child as handicapped; or

(2) assess your child; or

(3) change the education program your child is receiving; or

(4) change the place where your child is being served.

The school officials must also give you the general written notice if you ask them to make any of these changes and they refuse.

If the school officials want to take any of these actions, they must tell you in writing the following things:

(1) the action the school wants to take for your child;

(2) why the school wants to take that action; and

(3) what other options the school considered and the reasons why any other option was not chosen.

If you ask the school officials to take any of the actions listed above, and they refuse to act, they must give you their reasons in writing.

It is very important to be sure that you receive all information so that you will know what the school is doing and what you can do to help your child. You may want to use this next section as a checklist. Compare the notice you get from the school with this checklist to be sure you have been given all important information.

What Must Be in the Notice of Rights

This general notice to you must tell you about your rights in eight basic areas:

1. Records - The school must tell you about your rights to:

_____ see these records;

_____ make copies of records;

_____ get a list of all records on your child and to be told where they are kept;

_____ ask for an explanation of anything in the record;

_____ ask for a change in those records; and

_____ ask for a hearing if the school refuses to change the records.

Also, you must be told that you must give your consent before information about your child can be given out, and you must be told to whom the information will be given.

2. Consent - The school must tell you what consent is, what it means to give your consent, and what steps have to be taken to get your consent. There are four times when the school officials must get your consent before they can act:

_____ before the school can test your child;

_____ before the school can change his educational placement;

_____ before the school can give out confidential information about your child; and

_____ before the school can give out information about your child for purposes other than those for which you have already given your consent.

3. Evaluation or Assessment - The school must tell you:

_____ how your child will be evaluated or tested;

_____ what tests will be used and the results of the tests;

_____ about reports made on your child;

_____ about other important factors that caused the school to make a decision about your child;

_____ that these tests should not discriminate against your child on the basis of race, language or culture;

_____ that these tests must take into account special problems your child may have in his sensory, manual, or speaking skills;

_____ that these tests will be given to your child in his native language or in any other way in which he communicates;

_____ that these tests will be given by a team of trained, licensed or certified persons;

_____ that your child must be assessed in all areas related to his suspected disability;

_____ that your child must be re-evaluated at least every three years; and

_____ that you have a right to ask for an impartial due process hearing if you disagree with the evaluation of your child.

4. Independent Evaluation - The school must tell you that you have the right to:

_____ have an independent evaluation done for your child by professionals outside the school system if you disagree with the school's evaluation;

_____ have that evaluation considered in any decision made about services to your child;

_____ be told where you can get an independent evaluation at no expense or low expense;

_____ have the school district pay for the independent evaluation if the school's evaluation was not appropriate;

_____ be told exactly what things must be included in an independent evaluation and how it must be done so that it may be paid for by the school district; and

_____ be told that the school district has the right to ask for a hearing to decide if the school must pay for the independent evaluation.

You must be told that an impartial hearing officer can order an independent evaluation to be done at no cost to you.

5. Individual Education Plan - The school must tell you about your right to:

_____ work with the ARD Committee that writes your child's individual education plan (IEP);

_____ know when this committee meets and how you can meet with it; and

_____ have an impartial due process hearing if you disagree with any part of the IEP.

6. Least Restrictive Environment - The school must also tell you about your child's right to:

_____ be educated according to his IEP;

_____ be educated to the maximum extent possible with children who are not handicapped;

_____ be educated in the regular classroom unless he cannot receive a satisfactory education in the regular classroom by first using special aids and services;

_____ have the school consider a variety of instructional options and education placements for him before the decision is made;

_____ be educated as close to home as possible; and

_____ participate with non-handicapped students in other school activities, such as meals, recess, clubs, athletics, and special interest groups.

7. Hearings - The school must give you information about:

_____ your right to request an impartial due process hearing to challenge what the school district has done in identifying, evaluating, placing your child, or providing a free appropriate public education to your child;

_____ your right to be told about any free or low-cost legal and other services (such as evaluation and assessment) available to you;

_____ your rights in the hearing, such as:

* the right to have a lawyer present along with other persons with special knowledge or training about your child and his handicapping condition

* the right to give your own evidence and hear and cross-examine the school's witnesses

* the right to see the other side's evidence before the hearing

* the right to get a written or taped record of the hearing

* the right to receive the written findings of fact and the proposed decision of the impartial hearing officer

_____ your right to have the hearing at a time and place reasonably convenient to you;

_____ your right to have your child present at the hearing and to decide if the hearing is open or closed to the public;

_____ your right to appeal the decision of the Commissioner of the Texas Education Agency to the State Board of Education;

_____ your right to bring a lawsuit in court; and

_____ your right to have your child placed in a temporary program agreeable to you or remain in his current educational placement until all of the hearings and appeals are finished unless you and the school agree to another placement.

8. Surrogate Parent - The school district must tell you that a surrogate (substitute) parent must be appointed to represent a handicapped child when no parent can be identified or found or when the child is a ward of the state.

V. INDIVIDUAL ASSESSMENT

Special Services

In the referral process it may be decided that your child needs special services. State law defines special services as:

> "(A) 'special teaching,' which may be provided by professional and paraprofessional personnel in the following instructional settings:
>
> (i) resource room;
> (ii) self-contained classroom, regular or special campus;
> (iii) hospital or community class;
> (iv) homebound or bedside;
> (v) speech or hearing therapy class; or
>
> (B) 'related services,' which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the proper development and implementation of a handicapped student's individualized educational plan, including but not limited to special transportation, school health services, counseling with students or families, psychological services, audiological services, visual training, medical or psychiatric diagnostic services, occupational therapy, physical therapy, recreational therapy, social work services, parent counseling and training, adaptive equipment, special seating, orientation and mobility training, speech therapy, music therapy, and corrective therapy."

Individual Assessment

If it has been decided that your child may need special education and related services, an individual assessment must be done. This assessment and testing must be done within 30 school days after referral.

Assessment means that the school will give your child some tests and evaluate him to find out:

1. if he has a mental, physical, or emotional handicap;
2. if he is behind educationally and if he needs special services to help him;
3. what his strengths are and to find out what he has already learned; and
4. what special services he needs.

The assessment must be done by a team of professional persons, which includes at least one teacher or specialist with knowledge of your child's suspected handicap. Your child must be assessed in all areas related to his suspected handicap. For example, a great many tests may be needed for a severely handicapped child, while only one or two tests may need to be done for a child who stutters and has no other handicap.

If a learning disability is suspected, this team must include the child's regular teacher, or a regular classroom teacher qualified to teach children his age if your child has no regular teacher. In addition, the team must include at least one person qualified to do individual testing on children. This could be a school psychologist, a speech and language pathologist, or a remedial reading teacher.

The Parent's Role in Assessment

As a parent, you must consent (agree in writing) before the school can do an individual assessment of your child. Appendix V-1 is a sample letter requesting an individual assessment. If you refuse to consent, the school can ask for a hearing to decide if your child should have an assessment without your consent. The Admission, Review and Dismissal (ARD) Committee must rely on the evaluation to decide on the appropriate individual education plan (IEP) for your child. Therefore, an assessment is required before he is first placed in special education and before any important change can be made in his placement.

Assessment may be the most important step in the process of providing your child an appropriate education. The assessment may show that your child is not handicapped at all, but that something else is causing him to have problems in school. If your child is handicapped and does need special services, the information from the individual assessment will be used to write his IEP and to help locate an appropriate placement. The success of your child's education and his placement in the right program depend on a proper and complete assessment. You should make a special effort to help with the assessment in every way you can. This might mean doing such things as answering questions about your child, helping the school get medical or other records, and being sure that your child is available for testing.

The First Stage of Assessment

Assessment has three stages. The purpose of the first stage is to find out your child's handicaps. Your child is evaluated in at least five areas:

1. language development,
2. physical condition,
3. emotional condition and behavior,
4. social background, and
5. intellectual abilities.

Language Development

The language development evaluation is used to find out your child's dominant language and to assess his ability to express himself and be understood by others. If your child's dominant language is not English, the rest of the testing must be done in his dominant language. If he uses two languages and no single language is dominant, tests must be given in both languages. If possible, the person who gives these tests should be able to speak both languages well. If someone who can speak your child's language is not available, an interpreter may be used.

Physical Condition

The second area of evaluation is to find out if your child has physical problems that affect his education. The health information collected by the referral committee will usually be enough, but sometimes additional testing is needed. However, a general medical examination or specific tests are required if your child has a visual handicap, a hearing impairment, a physical handicap, or some other health problem which affects his ability to learn.

A child with a visual handicap must be tested by a licensed eye specialist. The report must specify the type and degree of visual impairment. If your child has some limited vision, a teacher of the visually impaired or specialist in low vision assessment must also evaluate him. The report must describe the effect of the eye impairment on his education.

If your child has a hearing problem, he must be tested by a licensed physician and a certified audiologist. The physician determines whether your child has a severe hearing loss even after corrective treatment or with the use of a hearing aid. The doctor's report must tell the type and severity of the hearing loss. The audiologist's report should describe what effect the hearing problem may have on his education.

If your child has some other kind of health impairment which may cause a problem with his schooling, there should be a doctor's examination. The doctor's report should note the type and severity of the health problem and may describe what the problem means to your child's education.

Emotional Condition and Behavior

The third area of evaluation is an evaluation of the emotional feelings of your child and his behavior to see how they affect his learning in school. This assessment may be based on in-school and out-of-school observations, behavior checklists, adaptive behavior tests, and interviews. Information for the emotional/behavioral assessment may come from you, your child, teachers, doctors, psychiatrists, or psychologists.

Social Background

The fourth area of evaluation is to study your child's situation in the family and in the community to see how it affects his learning and behavior. Most of this information comes from you and other family members. If the social evaluation shows that your child's educational problems are caused only by a different cultural lifestyle or poor education in the past, then he cannot be placed in special education.

Intellectual Abilities

The fourth area of evaluation is his intellectual ability. This includes tests of the child's intelligence and adaptive behavior. "Adaptive behavior" tells how your child acts compared with other children his age from your cultural group. For example, the school may want to know if your child can dress himself, feed himself, and ride the school bus. The school may also want to know how well he plays with other children and how well he follows rules or instructions.

Some educationally deprived or disadvantaged children have normal levels of adaptive behavior, but low intelligence test scores. These children are not really mentally retarded, and education services appropriate for retarded youngsters may not be the right services for them. If there is a great difference between the intelligence test score and the adaptive behavior level, further testing is usually needed.

If your child is very young or severely handicapped, it may not be possible to follow standard procedures in assessing his handicaps. If this happens, the person conducting the evaluation or test must explain in his report why standard procedures were not followed.

The Second Stage of Assessment

The second stage of the assessment is to find out how well your child is doing in school. The purpose of this part of the testing is to find out if your child is behind other students in the school district who are the same age. This assessment includes tests that measure how well he is doing in reading, mathematics, and spelling. The written report tells you at least three things: (1) any problems he has with school subjects and skills; (2) how far behind he is compared to other children his age and grade level; and (3) the reasons he may be having problems in school. This report may show that your child does not need special education but may need some other kind of special help in school.

The Third Stage of Assessment

The last stage of the assessment is to find out your child's ability to learn. This is done for two reasons: (1) to decide what special teaching methods should be used to teach your child; and (2) to decide what related services should be included in your child's IEP. The school will look at what kind of physical education program he needs. The school will also look at his need for vocational education. After your child's learning abilities are evaluated, a report is written giving your child's level of ability and making recommendations for his IEP.

The information gathered from the three stages of the individual assessment process will help the ARD Committee to identify your child's handicaps and to develop an IEP for him. The IEP must include the special education and related services he needs to get an appropriate education.

Testing Requirements

Federal and state regulations require that tests used in the individual assessment must be fair, accurate and measure what they are supposed to measure. All tests used must be free from racial and cultural bias. Some children are mislabelled as mentally retarded because they score low on tests which are racially or culturally biased. However, there are very few tests which are free from racial and cultural bias at this time. To help prevent misidentification, the assessment team must look at cultural and environmental factors which may make a difference in the child's performance. They must use a number of tests in addition to the standard intelligence (IQ) test.

Placement in special education must be based on more than one test. A complete assessment is required before any child may be placed in special education. Whenever possible, tests must be given in the child's native language or other method of communication (for example, sign language). As stated earlier, if the child uses two languages but neither is dominant, tests must be given in both languages.

Tests must be given according to the manufacturers' instructions and by trained persons. The results of the tests must accurately measure what the tests are supposed to measure. For example, a mathematics achievement test should measure your child's performance level in mathematics and not his ability to hold a pencil. Timed science tests may not be appropriate when given to children with learning disabilities because the tests may actually measure the child's ability to read and not what he knows about science. Other tests will be used to measure your child's handicaps.

Checking Assessment Results

Once the reports of the assessments are completed, you should get copies of the tests and results for your records. Be sure to get definitions, interpretations and explanations of any terms or statements in the reports that you do not understand. Study the reports until you are satisfied that they are accurate and complete. You will need to understand the reports so you can take an active role in developing your child's IEP.

There are several things you can do to make sure you understand as much as possible about your child's tests and what they mean:

1. Meet with a professional person at the school who did your child's tests or who can explain them to you;

2. Talk to other experienced parents who have a child with a handicap similar to your child's;

3. Ask a professional person who is not employed by the school to help you understand the tests, find out if they are accurate, or if more or different tests should be done; and

4. Get information about your child's suspected disability from a parent organization, university, education service center, or public library.

Additional Testing

If you feel that the school's assessment was incomplete and that additional testing is needed, you can ask the school to perform additional testing. A sample letter for requesting additional testing is in Appendix V-2.

Independent Evaluation

If you think that the school's assessment does not accurately measure your child's handicaps, how well he does in school, or what he needs, you may want to get an independent evaluation. Independent evaluations are done by qualified persons who are not employed by the school. You should ask the school how and where to get an independent evaluation. The school must give you this information.

The school must pay for the independent evaluation unless it is proven at a due process hearing that the school's assessment was appropriate. If you want the school to pay for the independent evaluation, the tests you get must meet the same requirements that the school uses when it performs an assessment.

Independent evaluations must be considered in any ARD Committee decisions. A sample letter requesting an independent evaluation is in Appendix V-3.

Due Process Hearing

The third thing you can do if you feel the school's assessment is inaccurate or incomplete is to challenge it in an impartial due process hearing. If you do go to a hearing, you will need some proof or evidence showing what is wrong with the school's assessment. For example, this proof could be a doctor's or psychologist's report or an independent evaluation.

Re-Assessment

A re-assessment must be done by the school at least every three years. However, the school must do a re-assessment more often if the school thinks it is necessary or if you ask for a re-evaluation. If your child does not progress in his special education placement, you may want to ask for a re-evaluation. A poor assessment can result in an inappropriate IEP and placement. A sample letter for requesting a re-evaluation is in Appendix V-4.

LETTER REQUESTING AN INDIVIDUAL ASSESSMENT

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child). My child is having problems with his school work. Please give him an individual assessment to see if he has a handicap and whether he needs special education and related services. Please tell me in writing who to contact to get the assessment.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

LETTER REQUESTING ADDITIONAL TESTING

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child). I have studied the reports of the school's assessment of my child and feel that he was not evaluated in every area of suspected disability. I believe additional testing is needed in the area of (list areas needing further testing). Please tell me in writing who to contact to get the additional testing.

Thank you for your help. I look forward to hearing from you soon on this matter.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

LETTER REQUESTING AN INDEPENDENT EVALUATION

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child). I do not feel that the school's assessment of my child is appropriate.

Please tell me in writing of the criteria under which the independent assessment must be conducted so that it meets the criteria the school uses in its assessment. Also, please tell me in writing where I may obtain an independent evaluation for my child.

I understand that the school must pay for the independent assessment unless it can prove in a due process hearing that its assessment was appropriate.

I will send you the results of the independent evaluation. I understand that it must be considered in any future decisions about my child's education.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

LETTER REQUESTING RE-EVALUATION
(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child). I recently reviewed my child's assessment and it is out-of-date. I request that my child be re-evaluated. Please tell me in writing who to contact to schedule a re-evaluaton.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

VI. INDIVIDUAL EDUCATION PLAN (IEP)

After the assessment of your child, you will meet with the rest of the Admission, Review and Dismissal (ARD) Committee. If the assessment shows that your child is handicapped and can benefit from special education and/or related services, the ARD Committee will write his individual education plan (IEP). The IEP is a written plan, designed just for your child. It is developed at a meeting with you, school officials, and, if appropriate, your child. Although the IEP is not as detailed as a teacher's lesson plan, the IEP should list each of your child's education goals for the year and the steps for him to take to reach each of the goals. The IEP also states your child's education needs and the special education and related services the school will provide to meet those needs. The IEP is the basic program plan for your handicapped child. The placement in a particular school, class, or activity is based on the IEP. Appendix VI-1 is a sample letter requesting an IEP for your child.

You have a right to participate in writing the IEP. You should be prepared for the IEP meeting and give your ideas so that the IEP is workable, complete, and appropriate for your child's educational needs. Checklists are given at the end of this section to help you prepare for your child's IEP meeting.

When an IEP is Required

An IEP is required before your child receives special education and related services. The IEP meeting must be held within 30 days after it is first learned that your child needs special education. For children already in special education, an IEP must be in effect at the beginning of each school year.

Members of the ARD Committee

The IEP meeting is a team approach to planning for a handicapped child's needs. The team approach makes sure the services are coordinated by the different people working with the child. The IEP is developed by the ARD Committee. This committee must have the following members:

1. three school officials - one each from school administration, assessment, and instruction,
2. the designated educational liaison,

3. the child's parent, guardian, or surrogate parent,

4. the child, where appropriate.

Federal regulations also provide that: (1) the child's teacher and someone else who is qualified to provide or to supervise special education must participate in the IEP meeting; (2) someone from the assessment team must be at the IEP meeting if the child was just evaluated for the first time; and (3) other persons may participate in the development of your child's IEP if you or the school want them to participate.

Notice About the IEP Meetings

You are a member of the ARD Committee. You have a right to participate in developing your child's IEP. The school must give you notice about the ARD/IEP meeting early enough so that you can get ready for the meeting and be able to be there. This notice must include the purpose, time, and place of the IEP meeting and a list of the persons who will attend. If you want to go, but the date, time, or location is not convenient for you, ask the school to reschedule the meeting. The school must schedule the meeting at a time and place that is agreeable to you and school officials. If you cannot attend the IEP meeting, the school must use other methods, such as telephone conference calls, to give you a chance to participate. You have a right to have an interpreter at the meeting, but you must be sure to tell the school before the meeting that you will need one.

Writing the IEP

The ARD Committee will discuss the information in your child's assessment. Based on this information and discussion, the ARD Committee will write your child's IEP. The IEP must include statements about how your child is doing in school. These statements include your child's present grade level and how well he does in academic subjects. The statements should also list your child's physical abilities and disabilities, how he acts, and his vocational skills. These statements must include your child's education needs. Make sure that all of your child's education needs are listed in his IEP so that you know what special education and related services he must have. Appendix VI-2 is a sample form for what one page of an IEP might look like. Each school districts uses its own forms, but you should be sure that your child's IEP contains all of the elements set out. Also, school districts may use different terms or definitions. Be sure you understand the form you are using.

What is Education for a Handicapped Child?

When you and the other members of the ARD Committee write your child's IEP, you will need to decide what services your child needs in order to benefit from education. This naturally leads to the question: what is education? How do you know, or show, that your child's needs are educational? There has been a lot of discussion about this recently, and a Manual such as this cannot give you an answer that will help in all situations. But experts in the field of educating handicapped children and some recent federal court decisions have provided a few ideas that might be useful to you in trying to decide what is right for your child.

First, education for a handicapped child is more than just academics (reading, writing, arithmetic, etc.). One important purpose of education is to help children grow up to be able to live and work and be responsible citizens in the community to the maximum extent possible. For children who are not handicapped, academics might be enough to achieve that purpose. But, for example, an emotionally disturbed child might need a lot of help with his behavior toward others in order to be able to live as independently as possible when he grows up. A physically handicapped child might need physical therapy to enhance his ability to live independently. Even if your child's academic program is suitable, that may or may not be enough. You and the other members of the ARD Committee will discuss whether your child needs some related services to help him get an appropriate education.

Second, education must be individualized. This means that what is an appropriate education for some other child is not necessarily an appropriate education for your child. Your child's special education needs could even be different from those of another child with the same handicap. It is important to make sure that your child's individual education plan is based on his education needs alone.

Goals and Objectives

Based on how your child is doing in school and what he needs, the ARD Committee will write annual goals and objectives for your child. The annual goals and objectives will differ for every child depending on what skills are most important for the child to learn and the child's particular abilities and weaknesses. Goals and objectives should be written so that you can see your child's progress.

An example of a poorly worded goal is:

> "This year we will work on improving Johnny's reading."

This goal provides no way to measure Johnny's progress and does not say how he will be taught. A better goal is:

> "By the end of school, Johnny will learn to read with 75% comprehension at the second grade level, as measured by Jones Standard Reading Tests, using the Playmate Series of books."

This goal is much more specific and lets everyone know how the child will be taught and how success will be measured.

The objectives are each of the steps which must be met in order to reach the annual goal. Using the above example, some of the objectives could include:

1. By the end of the first six weeks, he will complete a review of the book that he was reading at the end of last year, and then be given a reading comprehension test and correctly answer at least 75% of the questions before going to the Playmate Series.

2. By the end of the next four weeks he will read Playmate I, then be given a reading comprehension test and correctly answer at least 75% of the questions before going to Playmate II.

The objectives must include the names of the persons who will work with your child. They should also include a list of any special materials and resources to be used. Your child's IEP must state in writing when services will begin and how long they will continue. The time to be spent in each educational setting must be stated.

Make sure that all of the objectives in your child's IEP have a time limit and way to measure success so you can check on how well he is doing. The IEP must say when each objective will be re-evaluated. Goals or objectives may need to be changed during the year. The key is to set realistic annual goals that are appropriate for your child and meet his education needs.

Related Services

Your child's IEP must also contain a statement of the specific education services the school will provide and the extent to which he will participate in regular education programs. Make

sure that the services offered will satisfy all of your child's education needs. Among the services that should be included in the IEP are "Related Services." These may include such things as:

- audiological services
- counseling with students or families
- medical or psychiatric diagnostic services
- occupational therapy
- parent counseling and training
- physical therapy
- psychological services
- recreational therapy
- school health services
- social work services
- speech therapy
- special transportation
- adaptive equipment
- special seating
- music therapy
- corrective therapy
- visual training
- orientation and mobility training

The ARD Committee decides whether your child is eligible for each related service based on tests, a written report from related services professionals, or a referral from medical personnel. Find out before you go to the IEP meeting if you will need a doctor's letter or some other medical referral before the school will provide a particular related service. Every related service to be provided must be written in the IEP.

Signing the IEP

After the IEP is written, each member of the ARD Committee will be asked to sign it and indicate whether or not he agrees with the majority's decision. Your signature means that you were present at the meeting. But be sure to note in writing on the IEP if you disagree with any part of the plan or with the placement. You must also consent in writing to the placement of your child. The only way the school can place your child in a program without your consent is to ask for a due process hearing. If the school is successful at the hearing, your child will be placed in a program without your consent. Be sure to get a copy of the IEP for your records. You have a right to get a copy if you ask for it.

The IEP is not a contract between you and the school. You are not entitled to take legal action against the school just because your child's progress does not meet the goals and objectives in his IEP. However, you may ask for an impartial due process hearing to contest

your child's IEP and the services the school provides to meet his education needs. Your right to contest the IEP is based on your child's right under federal and state law to receive an appropriate education.

Review of the IEP

Your child must begin to receive services as soon as possible after the IEP meeting. Under Texas rules, your child's progress will be informally reviewed by the school every three months. You may want to ask the school to include you in this informal review. At this review, objectives may be modified.

Any major changes in the IEP must be approved by the full ARD Committee. Since you are a member of the ARD Committee, you must be told about the meeting and be given the opportunity to be there.

The ARD Committee will conduct a formal review of your child's IEP each year. At this annual meeting, the ARD Committee will study your child's progress during the past school year. They will also look at the annual goals and objectives. The committee will review the appropriateness of his current placement and will consider whether a change in placement is needed. The committee will study the related services your child receives and decide if they are still appropriate. The committee will also decide if he should receive additional evaluations. Appendix VI-3 is a sample letter asking the school to review and revise your child's IEP.

IEPs in Private Schools or Other Facilities

Children placed in private schools by the public school system must also have an IEP. The IEP must be written before the child is placed in a private facility or private school. The public school must try to get someone from the private school to attend the IEP meeting. If no one can attend, the public school must use telephone calls or other methods to insure that the private school participates. The public school decides whether the IEP will be reviewed by them or by the private school. If the private school reviews the IEP, the parents and someone from the public school must be included and must agree before any changes are made in the child's program. Even if the public school places your child in a private school, the public school must see that your child's rights are protected.

Under federal regulations, children enrolled by their parents in private schools are entitled to some special education and related services from the local public school. These children have a right to an IEP written by the public school. The public school must be sure that someone from the private school participates in the IEP meeting. If you are thinking about placing your child in a private school, be sure to ask your public school about these rules before you make your decision.

Getting Ready for the IEP Meeting

It is extemely important that you prepare for the IEP meeting. First, get all the information from your child's records about how he is doing in school. Carefully study all the tests and evaluations done on your child. Be sure that you understand the meaning of all terms and statements in these reports. Review your child's last IEP and talk with his teacher about his progress. Using this information, make notes about how your child is doing in the following areas:

1. language development - including both his level of understanding and his communication skills,
2. academic skills - reading, writing, arithmetic, spelling, etc.,
3. physical and motor development,
4. social and emotional skills, and
5. self-help skills (such as dressing and eating).

Next, you may want to make a list of what skills you would like your child to learn during the school year. These should be annual goals. The annual goals you list may build upon skills your child has already learned or may be completely new skills. The annual goals should be realistic for your child and should improve your child's ability to function independently. Note which of the goals you think are most important and those that you feel must be included in your child's IEP. Next, you may want to make a list of the related services your child will need. A checklist of related services is given in Appendix VI-4. Finally, check with school officials to find out if you will need letters from doctors or other persons before certain education or related services can be provided for your child. Make a list of the needed letters and other documents and be sure to get them before the IEP meeting.

Review and revise the lists you have made, making any additions, deletions, or improvements you think are necessary. Take these lists and notes and any letters from doctors and others to the IEP meeting. If possible, tape record the meeting so that you will have an accurate and complete record of what happens.

Do not be intimidated or feel threatened by the other members of the ARD Committee. Do not be reluctant or embarrassed to ask professional members of the ARD Committee to explain any acronyms (such as WISC, WRAT, PPVT), technical terms (such as perseveration or hypoventilation), or professional slang (such as "stimming" for self-stimulation) they use which you do not understand. Remember, you know your child and you have valuable ideas and information to contribute. The better prepared you are, the more confident you should feel.

Appendix VI-5 is an IEP Meeting Preparation checklist. Appendix VI-6 is a list of "Related Services" as defined by the P.L. 94-142 Regulations. Appendix VI-7 is an IEP Checklist.

LETTER REQUESTING AN IEP

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child). My child's IEP for this year has not yet been written. Please schedule an ARD Committee meeting as soon as possible to write my child's IEP. Please contact me so that the meeting can be scheduled at a mutually agreeable time and place. Please send me a copy of any IEP forms before the meeting.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

SAMPLE FORM

INDIVIDUALIZED EDUCATION PLAN

Student Name _____ Teacher _____ Campus _____ Grade ____ Date _____

Strengths:	Weaknesses:

Instructional Area: _____ Functional Level: _____ Instructional Setting: _____ Time: _____

LONG-TERM GOAL: _____

SHORT-TERM OBJECTIVES:

By _____ Student Will Be Able to:	Techniques and Methods to be Used	Materials & Resources	Start Date	End Date	Person(s) Implementing Activity	Evaluation Review Date, Criteria, & Results

Classroom management and/or comments: _____

Signatures of ARD Committee Members: _____

LETTER REQUESTING REVIEW AND REVISION OF IEP

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am the parent of (name of child). I recently reviewed my child's IEP which was developed in (month), (year), and believe that it is ("out of date," "incomplete," "based on insufficient evaluation information," etc.). I request that a new meeting be held as soon as possible to review and, if necessary, to revise my child's IEP. Please contact me so that the meeting can be scheduled at a mutually agreeable time and place.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

(Your name)
(Your address)
(Your telephone number)

Related Services Checklist

The following is a list of all of the related services available under state law. Check each service you think should be in your child's IEP. Make notes about such things as how often the service should be given and how long each session should last. Appendix VI-6 contains the list of related services as they are defined in the P.L. 94-142 regulations.

_____ audiological services

_____ counseling with students or families

_____ medical or psychiatric diagnostic services

_____ parent counseling and training

_____ corrective therapy

_____ psychological services

_____ recreational therapy

_____ school health services

_____ social work services

_____ speech therapy

_____ special transportation

_____ adaptive equipment and supplemental aids

_____ special seating

_____ music therapy

_____ corrective therapy

_____ visual training

_____ orientation and mobility training

IEP Meeting Preparation Checklist

1. Get and study all relevant information, including:

   _____a. assessments

   _____b. prior IEPs

   _____c. teacher progress notes (if necessary, interview teacher and others for information on your child's progress)

2. Make a list of your child's present level of functioning in the following areas:

   _____a. academic skills

   _____b. developmental skills, if child is at the pre-academic level

   _____c. language development - both the level of understanding and communication skills

   _____d. physical and motor skills

   _____e. emotional/behavioral/social skills

   _____f. self-help skills

   _____g. vocational or pre-vocational skills

3. Make a list of the annual goals and what you want for your child:

   _____a. Is each goal realistic?

   _____b. Will each goal help your child become more independent?

4. Make a list of special education and related services your child will need.

5. Find out what letters from doctors and others will be needed at the IEP meeting. Get these letters and make copies for your records.

6. Review and revise all of your lists.

7. If you want, get tape recording equipment to record the IEP meeting.

"Related Services" as Defined by the P.L. 94-142 Regulations

(1) Audiology includes:

- Identification of children with hearing loss;
- Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- Creation and administration of programs for prevention of hearing loss;
- Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
- Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Medical services means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) Occupational therapy includes:

- Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
- Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
- Preventing, through early intervention, initial or further impairment or loss of function.

(6) Parent counseling and training means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) Physical therapy means services provided by a qualified physical therapist.

(8) Psychological services include:

- Administering psychological and educational tests, and other assessment procedures;
- Interpreting assessment results;

- Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

- Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

- Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) Recreation includes:

- Assessment of leisure function;

- Therapeutic recreation services;

- Recreation programs in schools and community agencies; and

- Leisure education.

(10) School health services means services provided by a qualified school nurse or other qualified person.

(11) Social work services in schools include:

- Preparing a social or developmental history on a handicapped child;

- Group and individual counseling with the child and family;

- Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

- Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) Speech pathology includes:

- Identification of children with speech or language disorders;

- Diagnosis and appraisal of specific speech or language disorders;

- Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

- Provisions of speech and language services for the habilitation or prevention of communicative disorders;

- Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) Transportation includes:

- Travel to and from school and between schools;

- Travel in and around school buildings; and

- Specialized equipment (such as special or adapted buses, lifts, and ramps) if required to provide special transportation for a handicapped child.

IEP Checklist

The IEP should include at least the following:

1. Statement of how your child is doing in school, expressed in terms of his abilities, weaknesses, and educational needs, in the following areas, where appropriate:

   _____ a. academic skills

   _____ b. developmental skills (if child is at the pre-academic level)

   _____ c. language development

   _____ d. physical and motor skills

   _____ e. emotional/behavioral/social skills

   _____ f. self-help skills

   _____ g. vocational or pre-vocational skills

2. Annual goals

3. Objectives

4. Criteria for measuring progress toward each objective

5. Target date for completion of each objective

6. Special education and related services to be provided

7. Time your child will spend in each education setting

8. Date when services will begin

9. How long services will continue

10. Persons responsible for each service in the IEP

11. Special materials and resources needed

12. Extent to which your child will participate with non-handicapped children (including non-academic and extracurricular activities)

13. Signatures of ARD Committee members, with statements of any areas of dissent

VII. PLACEMENT

After the ARD Committee decides what special services will be provided to your child, the next step is to determine where the education program will be. It is important that the placement of your child is decided only after your child has had an assessment and after the ARD Committee has decided what education services will be in your child's IEP. Your child's placement must be based on his individual needs, as stated in the assessment and IEP. When choosing the placement for your child, several requirements must be met.

Least Restrictive Setting

Your child has a right to be educated in the least restrictive setting appropriate to his individual needs. Whenever possible, your child should be educated with children who are not handicapped. The major goal of special education for a handicapped child is to help him lead as normal a life as possible. Your handicapped child should have the chance to be with non-handicapped children in school activities and to be in a regular education setting as much as possible.

Special classes or other special services, separate from regular classes, should only be used for your child if his handicap is so severe that he cannot be educated in regular classes with the use of special help or equipment. This means the first thing the ARD Committee should consider is placement in the regular classroom with special help. If, because of your child's handicap, this is not possible, then the committee can consider other choices for placement.

Notice that the terms "appropriate" and "individual" are used when we talk about your handicapped child's education. This means that the school must provide the placement that is right for your child regardless of what is best for some other child. For example, just because your child has a certain handicap, that does not mean he can only be placed in a class with other children with the same handicap. This also means that the school district cannot designate one school and require every child in the district with a particular handicapping condition to go to that school. The ARD Committee must study the individual needs of your child alone and decide what placement is the most appropriate for him.

A class or school that is the least restrictive setting appropriate for one child may not be the least restrictive setting appropriate for another child. Each handicapped child is different, with different education needs. For this reason, the school system must have

available a choice of placements. The ARD Committee chooses where your child is to be placed. Generally, the least restrictive choice might be the regular classroom with non-handicapped children. This is often called "mainstreaming" because your child would be in the "mainstream" of public education. A much more restrictive choice might be a residential facility where your child would live and be taught with handicapped students. This is considered more restrictive because he is totally separated from non-handicapped children. There are several other possibilities in between, such as:

1. the regular classroom with special aides or special equipment,
2. a special class for children with the same education needs as your child inside the regular school building,
3. a special school, separate from the regular school, which your child would attend during the day,
4. "home-bound instruction," in which a teacher would come to your house to teach your child, or
5. other options or combinations of the above.

The placement the ARD Committee chooses must depend on your child's individual needs.

Mainstreaming

The law does not automatically require that your child be "mainstreamed." Mainstreaming may be what your child needs, or it may not be. What the law does require is that mainstreaming be given first preference. That is, mainstreaming should be carefully considered and ruled out before another setting is chosen.

If it is not clear at the time of the ARD Committee meeting which of two or more placements would be most appropriate for your child, the less restrictive placement should be tried first. The ARD Committee should agree on a trial period for a placement. The committee should decide how and when to evaluate the placement. If the placement is not working for your child, then another placement can be tried. It might be obvious that a less restrictive placement is not appropriate for your child without actually trying the placement. For example, the more severely handicapped your child is, the less likely it is that a mainstream placement would be appropriate.

Closeness to Home

If there is a choice of more than one appropriate placement in your school district, preference must be given to the one that is nearest to your home. Also, if possible, your child should be placed in the school he would attend if he were not handicapped. However, if your child's educational needs cannot be met in the school closest to home or in the school your child would attend if he were not handicapped, then your child must be placed in another school that can meet his needs.

The Disruptive Effect on Other Students

If your child's behavior is likely to endanger other children or keep other students in the class from being able to learn, then it is permissible to remove your child from the regular classroom and place him in a separate program. However, your child should not be excluded from the regular classroom if his behavior is no more disruptive than the behavior of the other students. If your child's handicap causes him to disrupt class or create a disturbance, the school may only suspend him for a short period. During this time the ARD Committee must write a new IEP and select another placement for your child, if that is necessary.

The Cost of Placement

Wherever your child is placed, the public school system may not charge you for the cost of that placement. Your child's educational placement must be at public expense. There is only one exception to this rule. That is when the public school offers your child an appropriate education, but you decide to place your child in a private school. Then, the school district does not have to pay for your child's placement.

Contracting for Services

When the school district cannot meet your child's education needs in its own program, it can contract with a private school. The school district can also arrange for placement in other programs when appropriate, such as regional programs for the deaf or blind, programs provided by Regional Education Service Centers, or cooperative programs with other school districts. The district should not contract for any part of your child's education if it can meet your child's needs in its own program. The ARD Committee must decide whether to contract or arrange for any other program. Even if the district contracts with a private school, its responsibility for your child does not end.

Residential Placement

Your child's handicap may be so severe and his education needs so extensive that he may require a residential placement. A residential facility is one in which your child would both live and go to school. If the ARD Committee determines that your child needs a residential placement, then the school district must see that it is provided at no cost to you.

The school district might contract with a private residential school or refer your child to a public residential facility. For example, the Texas Department of Mental Health and Mental Retardation operates eight state hospitals for the mentally ill and 13 state schools for the mentally retarded. Also, the Texas Education Agency operates the Texas School for the Deaf and the Texas School for the Blind.

Requirements for a Residential Placement

The school district has to provide for a residential placement only if:

1. it is necessary in order for your child to receive an appropriate education; and
2. the need for the residential placement is related to your child's handicap.

If it is necessary to place a child in a residential program only because of the home situation and not because of the child's handicap or education needs, the school district does not have to pay. For example, if your child needs a residential placement because you are leaving on a long trip, the school district does not have to pay because the need is not related to his education or his handicap.

However, even if your child's handicap is caused by the home situation, the school district still must pay for your child's residential placement, so long as your child's handicap keeps him from getting an appropriate education unless he is placed in a residential program.

If your child is placed in a residential program, the school district or the state must pay for his room and board and non-medical costs at the residential facility. Medical costs, which the school district does not have to pay for, include medication and services which can only be provided by (or under the direction of) a physican, optometrist, or dentist. Psychotherapy provided by a psychiatrist as part of an education program should not be considered a medical service.

Comparability

If your child is placed away from the regular school, the facilities, equipment and programs available to your child must be "comparable" to what is available to children in the regular school. For example, if the school your child would attend if he were not handicapped has air conditioning, then the school he does attend must have air conditioning.

Continuing Responsibility

When the school district places your child in a private school, it continues to be responsible for:

* seeing that your child has a proper IEP;
* monitoring your child's program;
* seeing that you, staff of the private school, and staff of the public school are all on the ARD Committee that writes your child's IEP; and
* seeing that your child enjoys all the rights and protections given to handicapped children in the public schools.

Public School Placements v. Private School Placements

If you are thinking of placing your child in a private school, it is important to know whether the public school is offering your child an appropriate education. The following information may help you make your decision.

The public school does not have to offer your child as good a program as the private school offers. The public school program must meet your child's education needs as well as it meets the needs of non-handicapped children. If it can do this, the public school does not have to pay for your child to go to a private school. This is true even if the private school can do a better job of educating your child. If you want to make sure the school district is responsible for your child's placement in a private school (or in another school district), you must be able to show that the public school cannot meet some of the important education needs of your child.

The school district is not responsible for everything your handicapped child needs. Rather, as we discussed in related services, the school district is responsible for meeting your child's educational needs. So, you must be able to show that the special services you want for your child, which the public school does not offer, are needed for your child's education. For example, if you want your child placed in a private school because it can provide more physical therapy than the public school, you must show that your child needs the extra therapy in order to receive an appropriate education. The statement of a doctor, physical therapist, or some other knowledgeable person could be used to show this.

The school district has not offered an appropriate education for your child if it has not followed the proper procedures. For example, if the school district decides to place your child in a program without first doing a comprehensive assessment and writing an IEP, then that placement is not appropriate. You can refuse it.

If you take your child out of the public school because you feel his education needs are not being met and place your child in another program, you may be able to get reimbursement for the cost of the placement. However, this may require a hearing or even court action if the school district refuses to pay for the placement. Before taking your child out of the public school, if you want the school to pay for the placement, you should ask for an ARD Committee meeting. You should ask for the services you feel your child should have but is not receiving. If the ARD Committee does not agree, you need to decide whether you want to withdraw your child from the public school. Then you must decide if you want to seek reimbursement from the school. It is a good idea to consult someone knowledgeable in this area to help you make your decision.

Accessibility

If your child is physically handicapped, then the program in which he is placed must be free of "architectural barriers." This does not mean that the entire building and campus must be accessible. For example, if your child is in a wheelchair, he must be able to use the entrance. Also, his classes must either be on the first floor or be accessible by elevator.

Placement During Due Process Hearing and Appeals

If you choose to challenge the school's assessment, program, or placement for your child in a due process hearing, your child's current placement must continue until the hearing and appeals are finished, including any court action that may follow. This means that if your

child is where you want him to be and you are contesting the school district's proposal to change his placement, then your child will stay where he is until the entire process is complete. If your child is in a contract placement, the school district must continue to pay for the contract even if the term of the contract ends during the hearing or legal action.

However, if your child is not in the placement you want, you will have to wait until the end of the hearing and appeals process before there can be any change in the placement. If you lose at the hearing, the placement will not be changed.

If your child is not currently in public school and you are trying to get him in school, then he must be placed in the public school, with your consent, during any hearing and appeals.

There is one exception to what has been said. During the hearing and appeals process, if you and the school agree, then your child's placement can be changed.

HOW TO DEAL WITH PROBLEMS

VIII. Discipline of Handicapped Students

IX. Impartial Due Process Hearings

X. Taking Legal Action

XI. Other Administrative Remedies

XII. Parent Organizations

VIII. DISCIPLINE OF HANDICAPPED STUDENTS

Each school district sets its own policies for punishing students who disobey school rules. Until recently, a student had few legal rights if school officials punished him. The United States Supreme Court recently decided two important school discipline cases.

One case involved suspensions from school for 10 days or less. In suspensions of 10 days or less, the school must tell the student what he did wrong. If the student says he did not do anything wrong, the school officials must tell him what proof they have and give him a chance to tell his side of the story.

In another case, the Supreme Court said that schools may physically punish students and that no special procedures have to be followed. These two Supreme Court decisions apply to all students, including handicapped students.

Some other school discipline cases involve handicapped students, but none of them have reached the United States Supreme Court. Therefore, we cannot tell you exactly what additional legal rights a handicapped student has if the school punishes him. However, the cases already decided strongly suggest that before punishing a handicapped child, school officials should find out if the child's problem behavior is caused by his handicap or is related to an inappropriate assessment, IEP, or placement. Some judges have warned school officials not to use expulsions or suspensions as a way to avoid educating a handicapped child.

Comments in the federal regulations to P.L. 94-142 suggest that a child's placement may need to be changed if he is so disruptive that the education of other students suffers significantly.

If your child starts behaving badly at school, you should act promptly. Serious school punishment can probably be avoided if the reason for the behavior is found and corrective steps are taken. Contact the persons who saw the behavior and find out exactly what your child did. Try to find out from these persons and from your child's teachers why they think your child behaved the way he did and what corrective steps might help. If you cannot agree on a solution to the problem or if the solutions you try do not work, you should ask for an ARD Committee meeting. The ARD Committee should talk about other ways to improve your child's behavior. The committee might seek additional testing or consider re-assessment. Also, the committee might change the IEP, or change his classroom, teacher, or placement.

If your child has already been suspended or expelled from school, you can take the following steps. Contact the person who suspended or expelled your child (usually the Principal or Assistant Principal) and try to find out all the facts about what your child did wrong. If you think your child's behavior was caused by his handicap or was caused by an inappropriate program or placement, then you may want to ask the Principal to postpone the punishment until the ARD Committee can meet. Even if the Principal does not agree to postpone the punishment, you should request an ARD Committee meeting to discuss your child's problem behavior, possible causes for the behavior, and corrective steps to take.

You may want to ask for a due process hearing if suspensions, expulsions, or other school punishments seriously interfere with your child's education. This is especially true if you think his handicap or an improper program or placement is causing his behavior.

Special discipline rules apply if you ask for a due process hearing. If your hearing is still pending and no final decision has been made, the school may not remove your child from the classroom unless he is a danger to himself or others.

IX. IMPARTIAL DUE PROCESS HEARINGS

If you disagree with the IEP written for your child or become dissatisfied with the services being provided to your child or if you have any other complaint concerning your child's education, you have a right to a due process hearing before an impartial hearing officer. You have a right to a final decision from that hearing within 45 days of your request for the hearing. If you lose in that hearing, you have the right to a final decision from a state review of the hearing decision within 30 days of your appeal. Asking for a due process hearing is a very important decision. It is a good idea to consider carefully the other things you can do to solve a problem before you request a hearing. You can try other remedies either instead of or in addition to calling for an impartial due process hearing.

Representation by a Lawyer

If you decide to ask for a hearing, the next important decision you need to make is whether to get a lawyer. Although some people have represented themselves, experience shows that generally those who have attorneys do better in the hearings. This is because the hearings follow the formal rules of evidence and civil procedure, which lawyers are trained to use. The school will bring its attorney, who knows about these rules and may use them to keep you from using some of your witnesses and evidence. It could be very important for you to have your lawyer there to protect your case.

Another important consideration is that at the hearing an official record is made. This means that a court reporter will prepare a statement of facts of what all the witnesses say. Also, all evidence will be put into the record. If your case ever goes to court, this record will be most of what the judge will use to decide the case except for some additional evidence that may be presented. If your evidence is presented correctly (according to the legal rules) at the hearing, it will not have to be presented again in a formal trial. If there is any chance your case might go to court, it could be to your advantage to have a lawyer represent you in the administrative hearing.

Try to get a lawyer before you ask for a hearing so that he can help you prepare properly. Once you ask for the hearing, things will begin happening quickly. You and your lawyer will have to work closely together.

Cost of a Lawyer

Of course, cost has to be a factor in your decision to get a lawyer, or even to ask for a hearing. The school is required to inform you of any free or low-cost legal assistance that might be available in your area. You should ask the school district for this information.

If the school district does not have this information, you may have to look for it yourself. If your income is low enough, you might qualify for legal aid. The amount of money you can make and still be eligible for legal aid is often changed to keep up with inflation. The legal aid office will also take into account other factors, such as recent unusually high bills which affect your ability to pay for a lawyer. To see if you qualify, check with your legal aid office. If you cannot find legal aid in your phone book, contact the Texas Legal Services Center in Austin, which is listed in the Resources Section of this Manual. Ask if there is a legal aid office near you. If you qualify for legal aid, you will not be charged a fee for the legal aid attorney's services.

If legal aid is not available to you, you might look into some other possibilities. The nearest chapter of the Texas Civil Liberties Union might be interested in taking your case if it feels significant legal rights issues are involved. The Texas Civil Liberties Union is listed in the Resources Section. If the TCLU decides to represent you, you will not be charged for the attorney's services.

The State Bar's Lawyer Referral Service might be able to recommend an attorney to you. Many parents have learned of attorneys willing to take this kind of case for a reasonable fee through their local consumer organizations (Association for Retarded Citizens, United Cerebral Palsy Association, etc.). The state offices of these organizations, listed in the Resources Section, can direct you to the nearest local chapters.

Finally, whatever success you have with the above, you can always call Advocacy, Inc. A staff member will discuss your situation with you and recommend possible solutions. The staff member may be able to refer you to an attorney in your area. If you have an attorney of your own, an Advocacy, Inc. attorney can provide him with information, materials, and advice which will assist him in representing you. This will save your attorney much time in preparation, which might otherwise be billed to you. In selected instances, when the case has serious implications for handicapped children generally, Advocacy, Inc. attorneys may represent developmentally disabled clients in impartial due process hearings. This decision is based on the circumstances of the particular case according to the guidelines set by the Advocacy, Inc. Board of Directors.

Impartial Due Process Hearing and Appeals

The chart below is an outline of the process and the timelines for each step, under rules of the Texas Education Agency. A discussion of each step follows the chart.

Chart - Timelines for Each Step

The problem is identified

↓

within 15 days

↓

A written request for a due process hearing must be filed

within 10 days

↓

An impartial hearing officer must conduct the hearing

within 15 days

↓

The hearing officer must prepare his proposed decision and send it to the State Commissioner of Education with copies to the parent and local school board

↓

within 10 days

↓

The local school board must send a written notice to the Commissioner stating whether or not it accepts the hearing officer's proposal. The parent may also send a written notice to the Commissioner stating whether or not he agrees with the hearing officer's proposal

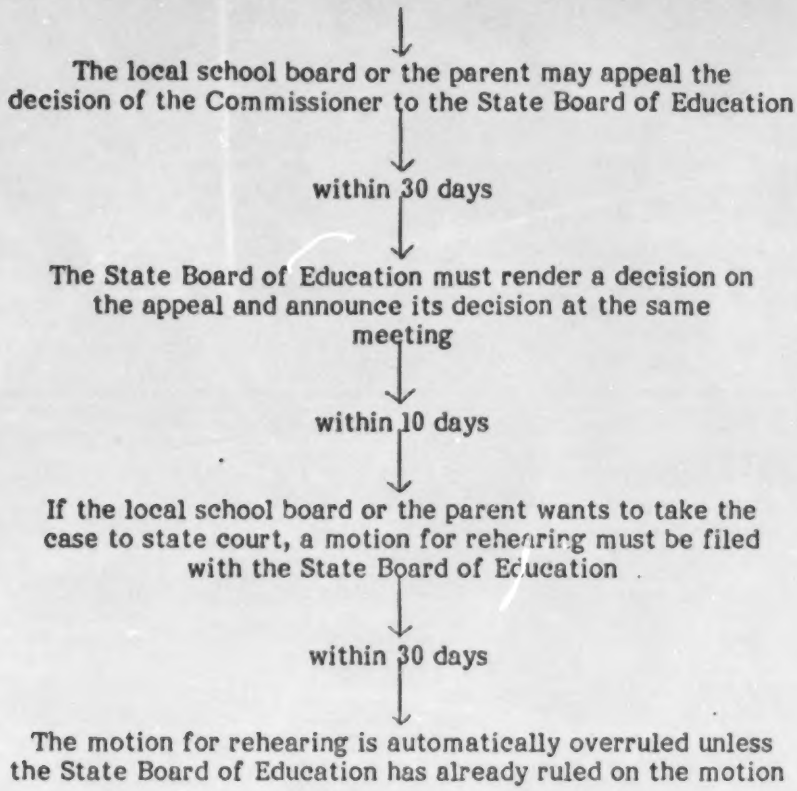
within 10 days

↓

The Commissioner must make a decision and send a written copy of his decision to the parent and to the local school board

↓

within 5 days


The local school board or the parent may appeal the decision of the Commissioner to the State Board of Education
within 30 days
The State Board of Education must render a decision on the appeal and announce its decision at the same meeting
within 10 days
If the local school board or the parent wants to take the case to state court, a motion for rehearing must be filed with the State Board of Education
within 30 days
The motion for rehearing is automatically overruled unless the State Board of Education has already ruled on the motion

Who Can Request a Hearing

Whenever you disagree with the school officials, you should make every effort to talk with the officials and try to settle your disagreement. However, you have the right to call for a hearing if you are dissatisfied with any aspect of your handicapped child's education program. The school has the right to request a hearing whenever: 1) you refuse to consent to let the school do an assessment or make the placement it wants for your child; or 2) you request that the school district pay for an independent assessment or evaluation you have had done on your child.

If you and the school agree on your child's placement, but you disagree on some part of your child's program (for example, you want more speech therapy for your child), then you must call for a hearing to get the services you want for your child.

If you and the school disagree over placement, it should be the school which calls for the hearing. If it looks like the school might go ahead with a placement you do not agree with, it might be best for you to call for the hearing. If you and the school each want your child's placement changed, but you disagree over what the new placement should be, witholding

your consent for the change in placement might prevent the school's recommended placement but will not automatically get you the placement you want. You may still need to call for the hearing.

Whenever you disagree with the school over your child's education, you should consider the situation very carefully to decide if a hearing is the best way to settle the disagreement. If it is, and the school district is not going to ask for it, you will need to ask for a hearing.

When to Ask for a Hearing

You should ask for a hearing within 15 days of the decision, action, or "failure to act" by the school district with which you disagree. However, some things which the school district refuses to do can be considered "continuing violations." That means that each day the problem is not solved is the first day of the 15 days. For example, if your child is in an unsatisfactory placement, or if your child is not receiving a needed service, then each day is a "failure to act." To make sure the 15-day time limit does not cause any problems, try to point to some action within the last two weeks when you write your letter requesting a hearing. If there is no event within the last 15 days, then you can write to the superintendent requesting what you want for your child and setting a specific day by which you want a reply. Then if the school officials refuse to grant your request or fail to answer by the deadline in your letter, you can ask for a due process hearing. You probably will not have to go to so much trouble. In most situations that would lead to a hearing, you either will have a clear violation of your child's rights within the last 15 days or you will have a "continuing violation."

The Complaint and Request for a Hearing

To ask for a hearing, write a letter to the Commissioner of Education:

Commissioner of Education
Texas Education Agency
201 East 11th Street
Austin, Texas 78701

In your letter, simply state what it is that you do not like about your child's education program and ask for a hearing. You do not have to go into much detail. You must send a copy of this letter, by certified mail, to the President of the Board of Trustees of your school district, at your school district's central administration building address. It is also a

good idea to send a copy to the superintendent. If you have a lawyer, he can write the letter. Appendix IX-1 is a sample letter asking for an impartial due process hearing.

The Hearing Officer

The hearing officer is appointed by the Commissioner of Education. There are six hearing officers in Texas, each of whom covers a region of the state. The hearing officer is an attorney in private practice who has received training from the Texas Education Agency. He receives an hourly fee from TEA for conducting hearings, but he is not an employee of the Texas Education Agency or of the local school district. Experience has shown that the hearing officers are fair and impartial and have a genuine concern for the best interests of handicapped children.

Place and Time of the Hearing

After you send your letter, you will be notified about the time and place of the hearing and the name of the hearing officer. You have a right to a hearing at a time and place reasonably convenient to you. This means that the hearing officer will conduct the hearing in or near your community. The hearing will not be held at the school building. Hearings have been held in such places as the courthouse, a hotel meeting room, a university conference room, and the regional education service center.

If the time of the hearing is inconvenient for you (such as a time during your work hours), you can get it changed to a time when you can attend. You or your lawyer should immediately tell the hearing officer of the time conflict and your preferred time.

Extension of Time

The hearing will be scheduled for a date that is within 10 days of the date the Commissioner receives your complaint. For this reason, it is a good idea for you and your attorney to prepare your case before you request the hearing. However, this is not always possible. If you do not think you can be ready in 10 days, you can request an extension of time from the hearing officer. Appendix IX-2 is a sample letter requesting an extension of time. Reasonable requests for extensions are usually granted by the hearing officer. The school district may also ask for an extension of time.

Disclosure of Evidence

You can exclude from the hearing any testimony or other evidence that the school district does not tell you about in writing at least 5 days before the hearing. CAUTION: The school district has the same right! It is important that you or your lawyer get information about your evidence and witnesses to the hearing officer and the school attorney at least 5 days before the hearing. This is a good reason either to have your case prepared before you request a hearing or to ask for an extension of time from the hearing officer. Appendix IX-3 is a sample Disclosure of Evidence.

The Hearing

The hearing officer will conduct the hearing very much like a judge conducts a trial. He will rule on the attorneys' motions and see that the rules of evidence and procedure are followed. A court reporter will record the proceedings. Witnesses will testify under oath in answering the questions.

Your Rights in the Hearing

* You have the right to open or close the hearing to the public.
* You have the right to be represented by an attorney.
* You have the right to have witnesses testify for you and to present any other evidence.
* You have the right to challenge evidence and cross-examine witnesses for the other side.
* You have the right to exclude testimony or other evidence that you have not been told about at least 5 days before the hearing.
* You have the right to be accompanied and assisted by a person with special knowledge about your child's handicap and education needs.
* You have the right to have your child present at the hearing.

Proposal for Decision by the Hearing Officer

Under the current TEA rules for these hearings, the hearing officer does not decide the case. Rather, within 15 days of the hearing, the hearing officer sends a proposed decision to the State Commissioner of Education. Sometime during that 15 day period, you or your attorney will receive a copy of the proposal for decision of the hearing officer. The school district will also receive a copy of the proposed decision. The decision should contain the hearing officer's proposed findings of fact and conclusions of law.

Notices to the Commissioner of Education

Within 10 days after the school board receives the proposal for decision from the hearing officer, the school board must send the Commissioner a written notice stating whether or not it accepts the hearing officer's proposal. If the school board does not accept the proposal, it must send its own proposed order to the Commissioner. That proposed order must include the school district's proposed findings of fact and conclusions of law. You or your attorney should make sure you get a copy of the school district's notice to the Commissioner.

Within 10 days after you or your attorney receives the proposal for decision by the hearing officer, you may send the Commissioner a written notice stating whether or not you agree with the hearing officer's proposal. If you do not agree with the proposal, your notice should contain your own proposal, including findings of fact and conclusions of law. You should send a copy of your notice to the school board.

Appeal to the State Board of Education

If you are dissatisfied with the Commissioner's decision, you may appeal to the State Board of Education. If you think you may take your case to court, you must appeal to the State Board of Education. Appendix IX-4 is a sample letter for notice of appeal. You have 5 days to appeal from the date you receive the Commissioner's decision. The State Board will render a decision within 30 days of receiving your appeal. This decision must be based on the record reviewed by the Commissioner. After you file your appeal, you or your attorney have 15 days in which to file a brief. If you do submit a brief, send 25 copies (so that each member of the Board will get one).

If the Board does not extend the time for decision, it will decide your case at its next meeting, which is usually on the second Saturday of the month. The meeting is held in the Board's meeting room in the north TEA Building at 150 East Riverside Drive, Austin, Texas. You can find out the time and place of State Board meetings by calling the Texas Education Agency at (512) 475-3042.

The State Board will not hear oral arguments, but may discuss your case. The decision of the Board will be announced at the meeting at which it is considered.

Appeal to Court

If you do not agree with the State Board's decision, you may appeal to state or federal court. If you do not already have an attorney representing you, you will need legal counsel to go to court. Whether you should appeal to state or federal court depends on too many factors to consider here. These factors include: the facts of your particular case (whether state or federal law and procedure would be more helpful); the time involved (generally, federal court will take longer); the judge involved; etc. These are important matters to discuss with your lawyer.

Other Information About the Hearing Procedures

During the hearing the opposing attorneys will make a number of motions and objections on which the hearing officer will make rulings. A manual such as this cannot give you a full discussion of the hearing procedures. To give you some idea of what is going on, the discussion below will introduce you to some (but far from all) of the major elements of the procedures. CAUTION: This discussion cannot substitute for formal legal knowledge and training!

Pre-hearing Conferences

Your hearing officer may call for a "pre-hearing conference" with you and your lawyer and the school district and its lawyer. There are two main purposes for this conference: (1) to agree on the major problems and issues which will be the basis of the hearing; and (2) to identify and gather required information for the hearing. For example, the hearing officer may order some additional tests for your child to be completed before the hearing.

Extensions of Time

Under state rules, the hearing officer, Commissioner, or Chairman of the State Board of Education may allow specific extensions of time for any of the steps set out in the chart and discussion. To get such an extension, you or the school district must file a written motion asking for the extension of time. You should ask for the specific amount of time you want and explain why you need it. Either you or the school district may object to a motion for extension of time.

Putting Witnesses "Under the Rule"

If either you or the school district "invokes the rule," this means that everyone who will be a witness must stay outside the hearing room until it is his turn to testify. During the hearing, the witnesses may not discuss the case with each other. If you and your lawyer are being advised and assisted by someone with special knowledge of your child's handicap and education needs, that person may not be able to be with you during the hearing if he is also going to be a witness.

Relevance

For any evidence to be put into the record, it must be "relevant" to some issue in the case. Your lawyer or the school's lawyer may object that something the witness is asked, or some document offered for evidence, is not relevant. If the hearing officer does not think the evidence would help prove or disprove some disputed point that must be decided, then the hearing officer will sustain the objection. This will mean that the question does not have to be answered or that the document will not be placed in evidence.

Hearsay

Generally, a witness can only testify about what he knows directly and not about what he knows only from what someone else told him. There are many exceptions to this rule, and the question of "hearsay" can be very technical and complicated. It is another matter the lawyers are likely to argue about in your hearing.

Expert Testimony

Someone who has special knowledge, training, or experience may be declared to be an "expert witness" by the hearing officer. There are special rules for deciding whether a witness should be an expert. The hearing officer has wide discretion in deciding whether a witness is an expert. If a witness is allowed to testify as an expert, the witness can draw conclusions, offer opinions, answer hypothetical questions, and sometimes give "hearsay" information.

Conclusions on the Part of the Witness

A witness who has not been accepted by the hearing officer as an "expert" is only allowed to tell about facts he has seen himself. The witness may not draw conclusions from those facts. For example, the witness could describe your child's difficulties in communication, but he might not be allowed to state his opinion that the difficulties are caused by cerebral palsy or mental retardation.

Verification of Records

To get a written document accepted as evidence, a witness must identify the document for the record and must testify as to its purpose and authenticity. This is called "verification." It is best for the person who wrote or signed the document to "verify" it. Otherwise, the witness should be someone with special knowledge of the document, such as the person to whom a letter is addressed. Often a hearing officer will accept anything in your child's school records as evidence without requiring that each document be verified by the person who wrote it. You or your lawyer should ask the hearing officer about this. All other documents will have to be verified.

LETTER REQUESTING AN IMPARTIAL DUE PROCESS HEARING

(Be sure to keep a copy for your notebook)

(Date)

Commissioner of Education
Texas Education Agency
201 East 11th Street
Austin, Texas 78701

Dear Commissioner:

I wish to request a hearing before an impartial hearing officer in order to challenge the refusal of the (name of School District) to provide an appropriate education program for my handicapped child, (child's name).

[Tell in this paragraph why you are requesting a hearing. Briefly describe the facts and tell how and why you disagree with the school.]

Sincerely yours,

(Your name)
(Your address)
(Your telephone number)

cc: President, School Board
Superintendent, School District

LETTER REQUESTING AN EXTENSION OF TIME

(Be sure to keep a copy for your notebook)

(Date)

(name of Hearing Officer)*
(address of Hearing Officer)

Dear (name of hearing officer):

I wish to have the date of the hearing extended from (date), to (date), so that I can have more time to [briefly state your purpose: e.g., "find a lawyer" or "prepare my case" or "obtain and study my child's education records," etc.].

Thank you for your consideration in this matter.

Sincerely yours,

(Your name)
(Your address)
(Your telephone number)

cc: Superintendent of ISD
(Name and address of School Attorney, if you know who it is)

---

*You can get this from the official letter which the hearing officer sends you setting the date of the hearing.

SAMPLE DISCLOSURE OF EVIDENCE*
(Be sure to keep a copy for your notebook)

DOCKET NO. _____**

(Child's Name) BNF ***	§	
(Your Name),	§	
	§	BEFORE THE IMPARTIAL
Petitioners	§	HEARING OFFICER, TEXAS
	§	EDUCATION AGENCY
v.	§	
	§	
(Name of School District),	§	
	§	
	§	
Respondent	§	

DISCLOSURE OF EVIDENCE

TO THE HEARING OFFICER:

Pursuant to 45 C.F.R. Section 121a.508(a)(3), Petitioners hereby disclose to Respondent the the following evidence which they propose to introduce at the hearing in this case:

1. Mr. and Mrs. (your last name), Petitioners in this matter, will testify as to (child's name's) disabilities, their efforts to obtain appropriate education services for (child's name), the procedures followed by Respondent with respect to its decisions regarding services to (child's name), and as to information discovered by them in (child's name's) education records, and will verify correspondence received by them from Respondent, which correspondence will be introduced into evidence;

2. Diagnostic and evaluation personnel of the (name of facility) will be called to testify as to (child's name's) education needs and will verify records compiled by them with regard to (child's name), which records will be offered into evidence;

3. (Name of doctor), a licensed psychologist, will be called to testify as to (child's name's) education needs and the most appropriate placement in which to serve said needs, and will verify records compiled by him with regard to (child's name), which records will be introduced into evidence.

Respectfully submitted,

(Signature of Parent) _____

(Signature of Parent) _____

Petitioners

CERTIFICATE OF SERVICE

This Disclosure of Evidence has been sent to _____, attorney for Respondent, by certified mail, on this ___ day of _____, 19__.

(Signature of parent) _____

(Name of parent)

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* If you are represented by an attorney, he can prepare this Disclosure of Evidence for you. The examples are only to give you ideas for the form of the disclosure. What you disclose, of course, will depend on your particular situation; e.g., you may not have a psychologist or staff of a facility as witnesses for you.

** You can get this number from the official letter you will get from the hearing officer setting the date of the hearing.

*** This stands for "By Next Friend," a legal term meaning that you are bringing this action on behalf of a minor child who cannot legally bring the action himself.

LETTER GIVING NOTICE OF APPEAL*

(Be sure to keep a copy for your notebook)

(Date)

Chairman, State Board of Education
Texas Education Agency
201 East 11th Street
Austin, Texas 78701

RE: (child's name), BNF (your name) v. (name of school district), Docket No. _____

Dear Chairman:

I wish to appeal the decision of the Commissioner in this case. I request that you reverse the Commissioner's decision and order the (program; services; placement; etc.), which I am seeking for my child.

Sincerely yours,

(Your name)
(Your address)
(Your telephone number)

cc: Superintendent of ISD
Lawyer for School Board

*If you are represented by a lawyer, he might want to use the more formal "Notice of Appeal," which is often used by attorneys in administrative appeals.

X. TAKING LEGAL ACTION

Your Right to Take Legal Action

If you fail to win your case in the hearing and appeals process, you still have the right to bring a lawsuit in state or federal court. For example, if the Commissioner decides that your child does not need the private residential placement that you requested and the State Board of Education, on appeal, agrees with the Commissioner, you can still go into state or federal court to try to overturn these decisions. Many people have the mistaken idea that they can bring a lawsuit only if it involves a question of money. This is not true. You can go into court and challenge any part of the evaluation, placement, or hearing process which violates your child's right to a free appropriate public education. For example, you may challenge the school's failure to provide related services, or you may challenge the school's decision to place your child in an inappropriate classroom. The court has the authority to order the school officials to provide and pay for the services and to follow the procedures to which your child is entitled. You should not take any legal action without the help of a lawyer.

You do not always have to go through the hearing and appeals process before bringing a lawsuit. You may be able to go directly into court if you can show that it would be useless for you to go through the administrative process. You may also be able to go directly into court if you can convince the judge that your child will be seriously injured if he does not immediately receive certain services. However, you must be able to convince the court that your child cannot wait until the hearings and appeals process has ended to begin receiving the services or programs you are requesting. The general rule is that a parent must go through the hearing and appeals process before going to state or federal court. The decision to avoid the administrative process may cost you a great deal of time and money. For example, if the judge finds that you should have gone through the administrative process first, he will dismiss your case. This means that you will have to start the hearing and appeals process. This is a decision that should only be made after you talk with your attorney and get his advice.

An Appeal from the Administrative Hearing

Appeal to State Court

If you are not satisfied with the outcome of the administrative process, you may appeal to the state or federal court. In order to appeal to state court, you must file the motion for rehearing with the State Board of Education. This gives the State Board one more chance to change its mind, but this usually does not happen. After the motion for rehearing is overruled, the State Board's decision is final. Then your lawyer has 30 days to file the appeal, which must be brought in a District Court in Travis County, Texas. If you file an appeal, the judge will primarily look at the official record developed before the hearing officer. He will take additional evidence regarding your child's education needs only if it is "material" to the case. Also, the party offering it must show good reason for not having presented the evidence to the hearing officer. The judge will uphold the State Board's decision unless you can show the decision is illegal, unconstitutional, outside the Board's authority, an abuse of discretion, or not reasonably supported by any substantial evidence in the record. Practically speaking, it is not easy to get a state court judge to reverse the Board's decision.

Appeal to Federal Court

You also have the right to challenge the State Board's decision in federal court. The federal judge will look at the official record developed during the administrative hearing and appeals process. However, if requested to, the federal judge will listen to additional evidence. The judge will base his final decision on the preponderance of the evidence presented by the parties. Thus, you may be able to convince the judge to reverse the Board's decision by introducing new evidence the hearing officer or the Board did not consider.

Time Involved in Court Action

It is impossible to predict how long a particular lawsuit will take. The time involved depends on such factors as whether you are filing in state or federal court; whether you are asking for preliminary or permanent relief; and whether any of the parties appeal the trial judge's decision.

Once you file a lawsuit, it may take some time before your case actually goes before a judge. The schedules of many of our courts, especially the federal courts, are overcrowded. In fact, in some cases you may have to wait one to two years before a federal judge actually hears your case. However, the court may grant you a hearing within a matter of weeks if you are requesting that the court grant you a preliminary injunction against the school district. For example, you may want to request a preliminary injunction to stop the district from expelling your child or to order it to provide an essential service or program. However, you must be able to show the court that your child will suffer irreparable harm unless the court grants the preliminary injunction. A final decision on your case may take months or even a year.

You should be aware that the lawsuit may not end with the trial judge's decision. For example, the school district may decide to appeal an unfavorable decision. Also, you may wish to appeal all or part of the judge's final decision. The appeal process adds time and expense to the lawsuit.

Cost of Bringing a Lawsuit

The cost of bringing a lawsuit includes expenses for filing legal documents, for serving notice, for court transcripts, for expert witnesses, and for attorney's fees. If you are eligible for free legal aid services, you will not have to pay any attorney fees, but you still may have to pay for court costs, such as fees for filing legal documents, for serving notice and for court transcripts. However, you may not have to pay for some or any of the court costs. If your income is very limited, you may be able to convince the court to allow you to proceed on an affidavit of inability to pay costs. If the court agrees to do this, you will not have to pay the court costs. Regardless of your financial condition, you should ask your attorney to give you a realistic picture of the expenses involved in bringing the lawsuit before it is filed. Some attorneys will insist that you pay money before anything is done in order to pay for at least part of the expenses.

If you win, the court may order the other side to pay your court costs and even your attorney's fees. In fact, in some cases, you can have your legal fees paid by the defendant if you win or favorably settle the case, under the Civil Rights Attorney's Fees Awards Act of 1976. A court can also order that the school officials pay the attorney's fees if you win or favorably settle a Section 504 education case.

Resources for Legal Research

Most attorneys will be unfamiliar with the federal and state laws affecting handicapped students and special education cases. Your attorney may want to contact the following national advocacy groups for information about these laws and cases:

Center for Law and Education
Guttman Library
6 Appian Way
Cambridge, Massachusetts 02138 (617-495-4666)

Children's Defense Fund
1520 New Hampshire Avenue, N.W.
Washington, D.C. 20036 (202-483-1470)

Council for Exceptional Children
1920 Association Drive
Reston, Virginia 22091 (703-620-3660)

Education Law Center, Inc.
225 South 15th St.
Philadelphia, Pennsylvania 19102 (215-732-6655), or
605 Broad St., Suite 800
Newark, New Jersey 07102 (201-624-1815)

Mental Health Law Project
1220 19th Street, N.W.
Washington, D.C. 20036 (202-467-5730)

National Association for the Deaf
Legal Defense Fund
Florida Avenue & 7th Street, N.E., Suite 311
Washington, D.C. 20002 (202-447-0503)

National Center for Law and the Handicapped
American National Bank Building,
Suite 1900
South Bend, Indiana 46601 (219-288-4751)

National Juvenile Law Center
St. Louis University School of Law
3701 Lindell Boulevard
St. Louis, Missouri 63108 (314-533-8868)

You may also want to have your attorney contact the publishers of this Manual for technical assistance:

Advocacy, Inc.
5555 North Lamar
Suite K-109
Austin, Texas 78751
1-(800)-252-9108 (toll free)

XI. OTHER ADMINISTRATIVE REMEDIES

There are other steps you can take to settle disputes regarding your child's identification, evaluation, or education placement. These administrative remedies can be used at the same time as, or instead of, an impartial hearing or a lawsuit. You can use the following administrative remedies:

1. File a complaint with HEW's Federal Office for Civil Rights (OCR).
2. Request that TEA conduct a Section 602 investigation.

How to File a Complaint with HEW's Office for Civil Rights

If you believe that your child's school has violated Section 504 of the Vocational Rehabilitation Act, you may file a complaint with HEW's Office for Civil Rights (OCR). OCR is the federal agency primarily responsible for enforcing Section 504. OCR will visit the school to conduct an investigation of your charges. It is important to remember that violations of P.L. 94-142 are usually also violations of Section 504. For example, a school violates both Section 504 and P.L. 94-142 when it: relies primarily on standardized IQ tests or any single test to evaluate and place children; refuses to pay for related services such as physical and occupational therapy; or fails to tell parents about proposed changes in their child's education program.

The Section 504 complaint must be filed within 180 days from the date of the matter you are complaining about unless the filing period is extended by OCR. However, you can still file a complaint even if more than 180 days have passed since the school violated Section 504. For example, if it has been more than 180 days since the school district refused to provide a service for your child, you can repeat your request to the school to provide the service. If the school district still refuses to provide the service, you can file a complaint. A sample of a letter requesting services from the school is in Appendix XI-1.

If you decide to file a complaint with OCR, your letter should include all of the following information:

1. your name, address, and telephone number, as the person filing the complaint;
2. the name, address, and telephone number of your child who is being discriminated against;

3. the nature of your child's handicapping condition;

4. the name, address, and telephone number of the school, agency, and persons who discriminated against your child;

5. a description of the discriminatory acts (e.g., denial of related services, failure to provide adequate notice of rights, inaccessible buildings, etc.);

6. the dates when the discriminatory acts occurred;

7. other handicapped children, if any, who were harmed by the discriminatory acts (for example, the school district may be refusing to provide adaptive physical education for any handicapped child, regardless of need or disability);

8. additional background information;

9. the names, addresses, and telephone numbers of persons who can be contacted for further information (diagnosticians, teachers, attorneys, therapists, doctors, friends, etc.);

10. an explanation of any other attempts to solve the problem (for example: Is TEA conducting a Section 602 investigation? Have you requested an impartial due process hearing?);

11. a request that OCR keep you informed of any action it takes, including copies of any written findings OCR might issue; and

12. attach copies of any relevant correspondence with the school and any other agencies or persons.

- Complaints should be mailed to the Chief of the Elementary and Secondary Education Division, Office for Civil Rights, HEW, 1200 Main Tower, Dallas, Texas 75202. This is the regional Office for Civil Rights for Texas. Also, send a copy of the complaint to the Texas State Plan Officer in the Bureau of Education for the Handicapped, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Appendix XI-2 is a sample 504 complaint letter.

The OCR Investigation

You should prepare for the meeting with the OCR investigator assigned to your case. First, organize your records. Be prepared to tell the investigator where he can obtain copies of your child's records, including all relevant medical, educational, and psychological information. Give the investigator the names, addresses and telephone numbers of any persons,such as attorneys, nurses, special education professionals, or other parents who can support your complaint. Prepare a short history of your problems with the school district,

including a summary of your contacts with the school officials. Make sure to include the names of the school officials and the dates of the contacts. You should be ready to prove your complaint by presenting evidence concerning the kind of programs and services your child should be getting. Simply criticizing the program is not enough. Keep your criticisms and charges factual. Do not simply attack other persons' personalities.

Do not be shy about monitoring OCR's investigation of your complaint. Write short letters checking-up on the progress of OCR's investigation. Also, keep OCR informed of any changes with respect to your child's program or evaluation. Always keep copies of any letters or other documents you send to or receive from OCR.

There are some risks involved in filing a complaint with OCR. For example, once you file a complaint with OCR you may have to wait until OCR has finished its investigation before you can file a lawsuit. However, some courts will not make you wait until the OCR investigation has ended if you can show that the OCR investigation will involve too long a delay. For example, a judge may allow the lawsuit to proceed if you can show that OCR will not begin on your complaint for four to six months.

Do not expect OCR to begin investigating your complaint immediately. It is not unusual for OCR to take several weeks before it even begins to look into some complaints. However, OCR must send you a letter saying that it has received your complaint and stating when it will start to look into your complaint. Allow OCR two weeks to reply to your complaint. If you have not heard from OCR in two weeks, write a follow-up letter asking when it will respond to your original complaint. There is a sample follow-up letter in Appendix XI-3. If you do not get an answer within one week, write to the Director of the Office for Civil Rights in Washington, D.C. Notify him of the regional office's failure to act on your letters. See Appendix XI-4 for a sample letter to the OCR Washington office.

When OCR does investigate your complaint, it must follow some very specific deadlines. OCR must complete its investigation and issue a written finding on whether or not the school violated Section 504 within 90 days after it gets your letter. OCR then has an additional 90 days to get the school to voluntarily comply with its written findings. If OCR cannot get your school to comply, OCR has another 30 days to take formal administrative action against the school.

OCR is willing to spend more time and resources investigating Section 504 violations involving a larger number of handicapped children. You should try to join with other parents who have similar problems and file a joint complaint against the school or the state education agency. Even if you cannot organize such a group of parents, you can still file your individual complaint on behalf of other handicapped children who have also been subjected to discrimination.

Section 602 Investigations

If your school district is violating the education rights of your child or a number of handicapped children, you may consider filing a "Section 602 complaint" with the Commissioner of the Texas Education Agency (TEA). Under Section 602 of the P.L. 94-142 regulations, TEA must review, investigate and resolve any substantial complaints regarding a school district's special education program. TEA is required to negotiate and provide technical assistance in order to get the district to comply with P.L. 94-142.

Section 602 complaints are usually used for clear violations of the state and federal special education regulations which affect a number of handicapped students. For example, it would be appropriate to ask for a Section 602 investigation when the school district:

1. refuses to conduct individual assessments before placing children in special education programs; or
2. segregates handicapped children in separate facilities because the district's remaining buildings and classrooms are inaccessible; or
3. fails to provide specialized transportation for handicapped students; or
4. refuses to admit multihandicapped children into an early childhood program; or
5. fails to notify parents of their right prior to a change in placement; or
6. fails to inform parents of their right to take part in writing their child's IEP.

You should send a copy of your 602 complaint to the Bureau of Education for the Handicapped and keep BEH informed about action taken on the complaint.

How to File a Section 602 Complaint

The Section 602 complaint should be in writing and should contain the following information:

1. the names, addresses and telephone numbers of the persons filing the complaint;
2. the approximate number of handicapped children affected by the school district's action, if known;
3. the nature of the childrens' handicapping conditions;
4. the names, addresses, and telephone numbers of the responsible school district officials;
5. a complete description of the violations (denial of related services, inaccessible buildings, lack of transportation, etc.);
6. the dates when the violations occurred;
7. additional background information;
8. the names, addresses and telephone numbers of persons who can be contacted for additional information (diagnosticians, teachers, therapists, doctors, other parents, etc.);
9. an explanation of any attempts to solve your problems with the school district, such as meetings with the superintendent, the ARD Committee or the school board (attach copies of any relevant correspondence with the school district);
10. a request that TEA keep you informed of any action taken about the complaint;
11. a request that TEA identify the person who will handle the complaint; and
12. a request that TEA notify you when the investigation will occur and when the investigator will meet with the parents.

A sample 602 Complaint letter is in Appendix XI-5.

Complaints should be mailed to the Commissioner of the Texas Education Agency, 201 East 11th Street, Austin, Texas 78701. Copies of the complaint should be mailed to the Texas State Plan Officer at the Bureau of Education for the Handicapped (BEH).

Your complaint letter should show that you have sent a copy of the complaint to BEH and that you intend to keep BEH informed of the progress of the investigation. You should inform BEH if TEA does not respond to your complaint or if proper action is not taken to solve your complaints. Appendix XI-6 is a sample follow-up letter to the Commissioner of TEA asking for action on the 602 complaint.

LETTER REQUESTING SERVICES FROM THE SCHOOL

(Be sure to keep a copy for your notebook)

(Date)

(Name of Principal)
(Name of School)
(Address of School)

Dear (name of Principal):

I am writing to request that the Admission, Review and Dismissal (ARD) Committee meet to reconsider its decision not to provide [give name of service, e.g. "occupational therapy"] for my child, (child's name). On (date), the ARD Committee determined that (child's name) did not need (name of service). The ARD Committee reached this decision in spite of [describe the evidence that supports giving the service to your child and that the ARD Committee knew about, e.g. "the recommendation of Dr. Smith, Johnny's pediatrician and the evaluations of the Cerebral Palsy Treatment Center's occupational therapist."] (Child's name's) performance in school has deteriorated due to the school's failure to provide this service.

Please advise me by (date) when the ARD Committee will meet to reconsider my request that (child's name) receive (name of service).

Sincerely,

(Your name)
(Your address)
(Your telephone number)

SECTION 504 LETTER OF COMPLAINT

(Be sure to keep a copy for your notebook)

October 10, 1978

Chief of Elementary and Secondary Education Branch
Office for Civil Rights
U.S. Department of Health, Education and Welfare
1200 Main Tower
Dallas, Texas 75202

RE: Edward Davis

Dear Sir:

The purpose of this letter is to make a formal complaint to you concerning the actions of the Blank Independent School District and the education of my handicapped son, Edward Davis. The main facts of the complaint are as follows:

1. Edward is a mildly mentally retarded 14 year-old boy who lives with me in the Blank ISD.

2. Blank ISD has excluded Edward from participation in his vocational education and physical education classes and failed to provide him with the prescribed speech therapy.

3. On March 18, 1978, the Admission, Review and Dismissal (ARD) Committee met to develop Edward's individual education plan (IEP) for the coming school year when he would be entering the Smith Junior High School. The ARD Committee agreed that Edward was ready to enter the vocational education program. The ARD Committee also agreed that he should continue to receive speech therapy three times a week for fifty minutes a session.

4. On September 18, 1978, three weeks after school had started, I learned that Edward had been dropped from his vocational education and physical education classes and that he would not be receiving any speech therapy this year. On September 18, 1978, Ms. Edith Jones, Edward's counselor, called to tell me that Mr. Clark, the principal, and Mr. Smith, the teacher of the vocational program, had met the day before to discuss the problems Edward was having in classes.

Ms. Jones told me that Edward had been teased and picked on by the other boys in his P.E. and shop classes. These problems were disrupting the classes.

Ms. Jones also told me that the school board had cut back on the special education funds. Therefore, speech therapy had been eliminated for children in the junior and senior high schools. Ms. Jones' phone call was the first time I had ever heard about Edward's problems in school. I immediately wrote Mr. Clark a letter informing him of my conversation with Ms. Jones and requesting that an ARD Committee meeting be scheduled to discuss these problems. I delivered the letter that day to Mr. Clark's office.

5. The ARD Committee did not meet until September 26, 1978. I said that Edward should be let back into the vocational education and physical education classes. I argued that he should not be punished for the behavior of the other students. Mr. Clark and Mr. Smith insisted that his presence was the source of the problem and they could not stop the other students' teasing.

Mr. Clark also said he was sorry, but the school board had cut back on special education funding and there was no more money available to pay for speech therapy for students in the junior and senior high schools. Edward's IEP was changed to reflect the actions taken by the principal. I refused to consent to the changes in placement. I indicated my opposition to the school's actions on the IEP. I also insisted that the reasons given by Mr. Clark for the removal from the classes and denial of speech therapy be included in the IEP.

6. Since September 18, 1978, Edward has not been going to his vocational education class. Instead, he has been placed in the study hall. He has not received any speech therapy since the school year began.

7. I believe that the school district's actions violate the Section 504 regulations and my son's right to an appropriate education.

8. I am requesting that you investigate the actions of Blank ISD and order the district to put Edward back in his vocational education and physical education class and give him the prescribed speech therapy. To assist you in your investigation, I will be happy to share with you all relevant documents from my

file and to put your investigators in touch with other persons who have pertinent information. The following individuals are responsible for the actions complained of:

Mr. Clark, Principal; Ms. Edith Jones, Counselor; Blank ISD, 123 Main Street, My City, Texas; (512) 444-3693.

9. I expect that the Office for Civil Rights will keep me informed of any actions taken about this complaint, including providing copies of any written findings. I also expect that OCR will promptly acknowledge receipt of my letter, and that it will immediately begin an investigation. I intend to keep the Washington Office for Civil Rights informed if there are delays in the investigation of this complaint.

Sincerely,

Mrs. Mary Davis
17 Oak Drive
My City, Texas 00000
(512) 444-4444

cc: Superintendent, Blank ISD

Texas State Plan Officer
Bureau of Education for the Handicapped

FOLLOW-UP LETTER TO OCR

(Be sure to keep a copy for your notebook)

October 24, 1978

Chief of Elementary and Secondary Education
Office for Civil Rights, HEW
1200 Main Tower
Dallas, Texas 75202

Dear Sir:

On October 10, 1978, I filed a complaint with your office charging that the Blank Independent School District had discriminated against my child on the basis of his handicap in violation of Section 504 of the Rehabilitation Act. However, I have not received a letter acknowledging my complaint and saying when your office will begin an investigation of my complaint.

My son Edward is being denied urgently needed services. Please let me know by October 31, 1978, when your investigation will begin.

Sincerely,

Mrs. Mary Davis
17 Oak Drive
My City, Texas 00000
(512) 444-4444

cc: Texas State Plan Officer
Bureau of Education for the Handicapped

LETTER TO WASHINGTON OFFICE FOR CIVIL RIGHTS

(Be sure to keep a copy for your notebook)

November 3, 1978

Director of the Office for Civil Rights,
HEW
330 Independence Avenue, S.W
Washington, D.C. 20201

Dear Sir:

I am writing to strongly protest the Dallas Regional Office for Civil Right's failure to respond to my Section 504 complaint against the Blank Independent School District. I mailed my complaint to the Dallas Regional Office on October 10, 1978. On October 24, 1978, I sent another letter asking OCR to let me know by October 31, 1978, when it would start investigating my complaint. I still have not received a reply.

My child is being denied the programs and services he needs.

Please see that the Dallas Regional office meets its legal obligation to investigate and resolve my Section 504 complaint.

Sincerely,

Mrs. Mary Davis
17 Oak Drive
My City, Texas 00000
(512) 444-4444

cc: Chief of Elementary and Secondary
Education Division
Office for Civil Rights
1200 Main Tower
Dallas, Texas 75202

(You may also want to send copies to your Congressmen and Senators)

SECTION 602 COMPLAINT LETTER

(Be sure to keep a copy for your notebook)

December 3, 1978

Commissioner of Education
Texas Education Agency
201 East Eleventh Street
Austin, Texas 78701

Dear Commissioner:

The purpose of this letter is to make a formal complaint about the Blank Independent School District's failure to provide our handicapped children a free appropriate public education. We request that you investigate this complaint and take appropriate action.

Our school district does not comply with the P.L. 94-142 regulations or the state's special education policies and administrative procedures. Since last year, the district refused to conduct adequate evaluations before placing children in special education classes; it does not invite parents to take part in the development of their children's IEPs; it does not notify parents of their rights; it refuses to allow any handicapped child to participate in athletic programs; and it requires parents to pay for physical and occupational therapy.

These violations affect a large number of the handicapped children currently enrolled in the district's programs. When your investigator contacts us, we will provide him with the names of other parents with similar complaints. We will also give him the names of other persons who can be contacted for additional information.

We have tried to resolve our complaints informally. We have met with the director of special education, the superintendent, and the school board. In a letter dated six months ago, the superintendent agreed to the following: to notify parents of their procedural rights; to conduct comprehensive assessments; and to provide occupational and related therapy at no cost. However, none of these promises has been kept. We are enclosing copies of letters and documents concerning this complaint and our attempts to solve the problem. From the letters you can get the names and addresses of the responsible school officials.

Please inform us in writing of the individual who will conduct the investigation and the date the investigation will begin. We expect to be kept advised of any developments or decisions in your investigation of this complaint.

We have sent a copy of this complaint to the Bureau of Education for the Handicapped (BEH). We will keep BEH advised of the progress of the investigation.

Sincerely,

(Your name)*
(Your address)
(Your telephone number)

cc: Texas State Plan Officer
Bureau of Education for the Handicapped

*This information should be given for each parent signing the letter

FOLLOW-UP LETTER TO COMMISSIONER OF TEA

(Be sure to keep a copy for your notebook)

January 3, 1979

Commissioner of Education
Texas Education Agency
201 East Eleventh Street
Austin, Texas 78701

Dear Commissioner:

On December 3, 1978, we requested that TEA conduct a Section 602 investigation about the Blank Independent School District's failure to comply with the federal and state special education regulations. More than three weeks have passed since we filed the complaint, and we have not received a reply to our letter.

Please tell us when you will conduct an investigation of the Blank Independent School District's special education program. Please tell us who you have chosen to handle our complaint. Also, inform the investigator that we wish to meet with him during the investigation.

We are sending a copy of this letter to the Bureau for Education for the Handicapped. We will keep them informed of any further delays in the investigation and resolution of this complaint.

Sincerely,

(Your name)*
(Your address)
(Your telephone number)

cc: Texas State Plan Officer
Bureau of Education for the Handicapped

*This information should be given for each parent signing the letter

XII. PARENT ORGANIZATIONS

Almost everyone has heard the expression "you can't beat city hall." Experienced parents of handicapped children know that this statement is not true. Working together in organizations, parents have been able to cause many changes and improvements in programs for handicapped children. This is especially true in the area of education. In fact, most of the laws in the area of special education today have been passed because of the work of organized parent groups during the past thirty years.

There are many advantages to joining an organization of parents and other persons interested in the handicapped. The biggest benefit is that you will get information and ideas which will help you and your child. You may want to go to meetings, listen to speakers, talk to other parents and read the newsletters and booklets of parent organizations. This is one way to learn more about your child's handicap and the kinds of programs and services he needs. This will help you do a better job of representing your child in ARD Committee and IEP Committee meetings. There is another important benefit of parent organizations. You can learn a great deal about the "system" of local, state and federal services for handicapped children. You can work with other parents to make the system work the way it should. Finally, you can get emotional support by being able to talk with other people who have had similar experiences.

There are several formal organizations of parents listed in the Resources section of this Manual. They are organized on local, state and national levels. You can write the state office of an organization for more information about joining or forming a local chapter.

If your community does not have an organization which is directly concerned with your child's particular handicap, there are several things you can do:

1. talk to other parents of children with similar handicaps and start a local chapter of one of the state or national groups;
2. join a state organization and ask for the information or assistance you need;
3. talk with other parents who have children in special education and start a special education parent group.

Many times parents find they are able to get things done working as a group which they cannot get done as individuals. When parents meet or talk, they often identify common problems. By organizing this information, a group of parents can often see what needs to be done and how to do it. Some examples of parent group action are:

1. meeting with school officials, such as special education directors, principals or superintendents, to get administrative action;

2. meeting with local school boards to explain problems and get changes in policies;

3. getting public attention through newspapers, radio or television; and

4. bringing local problems to the attention of the state or federal education agencies.

To put the laws discussed in this Manual into action, TEA, HEW and other agencies have written rules and regulations. Also, many local school districts have their own policies or rules. This Manual cannot go into detail about how laws, rules and regulations, or policies are written and how to change them. What is important is that they can be changed. This is one more important reason for strong and active parent organizations. It takes many parents in constant contact with each other to identify laws or regulations which are not working as they should. Well-organized parent groups can convince administrators, legislators and Congress to change rules or laws and provide the funds necessary for services for the handicapped.

RESOURCES

Organizations for Parents

State Agencies

Legal Assistance

Organizations for Parents

Epilepsy Association of Texas
300 East Huntland Drive, Suite 105
Austin, Texas 78752
(512) 459-7373

Statewide organization of parents, persons with epilepsy and interested professionals; local chapters, newsletter and publications.

Parent Association For the Retarded of Texas
8301 Franwood
Austin, Texas 78758
(512) 453-7145

Statewide organization for parents of retarded children and adults who live in state schools for the mentally retarded.

Texas Association for Children with Learning Disabilities
1011 West 31st
Austin, Texas 78705
(512) 458-8234

Statewide organization of parents and professionals; local chapters, newsletter and publications.

Texas Association for Mental Health
103 Lantern Lane
Austin, Texas 78731
(512) 459-6584

Statewide organization of parents, professionals and interested volunteers; local chapters, newsletter and publications.

Texas Association for Retarded Citizens
833 Houston Street
Austin, Texas 78756
(512) 454-6694

Statewide organization of parents, professionals and interested volunteers; local chapters, newsletters and publications.

Texas Society for Autistic Citizens
203 Stokes Building
314 West 11th
Austin, Texas 78701
(512) 472-1454

Statewide organization of parents and interested professionals; local chapters, newsletters and publications.

United Cerebral Palsy of Texas
201 San Jacinto Building
9th and San Jacinto
Austin, Texas 78701
(512) 477-6515

Statewide organization of parents, persons with cerebral palsy and interested professionals; local chapters, newsletter and publications.

State Agencies

Texas Commission for the Blind
314 West 11th
Austin, Texas 78701
(512) 475-6036

Provides information, education and referral services for blind persons.

Texas Commission for the Deaf
P.O. Box 12904
Austin, Texas 78711
(512) 475-2492

Provides information, education and referral services for deaf persons.

Texas Education Agency
Division of Special Education and Special Schools
201 East [illegible]
Austin, Texas 78701
(512) 475-3009

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Services for Visually Handicapped
(512) 475-3501

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Services for Deaf
(512) 475-3541

Handicapped Hotline
1 (800) 252-9668

A toll free service to provide information or assistance to parents and to handle criticisms or complaints regarding special education programs.

Texas Department of Mental Health and Mental Retardation
P.O. Box 12668, Capitol Station
Austin, Texas 78711
(512) 454-3761

Provides special education and related services for children residing in state schools for the mentally retarded, state hospitals for the mentally ill, and other facilities administered by the Department.

Legal Assistance

Advocacy, Incorporated
5555 North Lamar
Suite K-109
Austin, Texas 78751
1 (800) 252-9108 - Toll free
(512) 475-5543

A statewide advocacy system that provides services to handicapped children and their parents and to handicapped adults.

County Bar Associations

Organizations of attorneys in major counties. Several county bar associations have a lawyer referral service which can refer parents to lawyers who specialize in education or child related cases. See the yellow pages of your phone book. If your county does not have an association, call or write the Lawyer Referral Service of the State Bar of Texas listed below.

Lawyer Referral Service
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
(512) 475-2580

Legal Aid or Legal Services

In Texas, ninety-two counties are served by local or area offices providing free legal services to persons unable to afford attorneys' fees. See the yellow pages of your phone book and call your local legal aid to see if you are eligible for services. If no Legal Aid or Legal Services office is listed in your directory, call or write the Texas Legal Services Center to see if your county is served.

Texas Legal Services Center
812 San Antonio, G-25
Austin, Texas 78701
(512) 477-4562

This office has the telephone number and address for every Legal Aid or Legal Services Office in the State of Texas.

Texas Civil Liberties Union
600 West 7th
Austin, Texas 78701
(512) 477-5849

A voluntary organization of attorneys with special interest in cases involving the violation of individual rights.

GLOSSARY

Definitions of Handicapping Conditions

Initials or Abbreviations

Special Education Terms

Important Laws, Rules, and Policies

GLOSSARY

Definitions of Handicapping Conditions

State Law

Section 16.104c of the Texas Education Code:

State law identifies 10 different classes or types of handicapped students which are to be served if the handicap listed is such that the child is so handicapped he ". . . cannot be adequately educated in regular classes of the public schools without the provision of special services." The handicaps defined in state law are:

physically handicapped	learning disabled
auditorially handicapped	speech handicapped
visually handicapped	autistic
mentally retarded	multiply handicapped
emotionally disturbed	pregnant students

Federal Regulations

Section 121a.5 of the Federal Regulations lists and defines the following handicapping conditions:

Deaf means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

Deaf-blind means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

Hard of hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

Mentally retarded means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period, which adversely affects a child's educational performance.

Multihandicapped means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

Orthopedically impaired means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

Other health impaired means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

Seriously emotionally disturbed is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

A. An inability to learn which cannot be explained by intellectual, sensory or health factors;

B. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

C. Inappropriate types of behavior or feelings under normal circumstances;

D. A general pervasive mood of unhappiness or depression; or

E. A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

Speech impaired means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

Visually handicapped means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

Initials or Abbreviations

ARD - Admission, Review and Dismissal

The activity or function of deciding whether or not a child is to be placed in or discharged from special education and deciding what special education and related services are to be provided. The ARD Committee must include the parent of the handicapped child.

BEH - Bureau of Education for the Handicapped

The national office responsible for administering federal funds for education of the handicapped and for making sure the states carry out the law correctly. BEH is a part of the Department of Health, Education and Welfare.

FAPE - Free Appropriate Public Education

This means special education and related services that are provided at public expense, under public supervision and direction, and at no charge to the parent. This special education and related services must be provided according to an individual education plan.

HEW - The Federal Department of Health, Education and Welfare

The federal agency responsible for administering federal funds for many programs and services, including special education for handicapped children.

IEP - Individual Education Plan

The annual written plan for education and related services for each handicapped child.

ISD - Independent School District

The local education authority which is responsible for providing a free and appropriate education for each handicapped child living in the area it serves.

TEA - Texas Education Agency

The state agency which is responsible for administering all state and federal laws and funds relating to special education programs for handicapped children. TEA is also responsible for seeing that all school districts and other state agencies carry out the law correctly.

Special Education Terms

Assessment - The process of: (1) giving a variety of special tests or evaluations to a child in every area in which he is suspected of being handicapped; (2) gathering important information about the child which may already exist; and (3) studying all the information gathered in order to decide how well the child is doing, and what problems he is having and suggest what special services he may need.

Audiologist - A licensed professional person qualified to test the hearing ability of children and to suggest or provide special teaching programs for children with hearing problems or hearing loss.

Designated educational liaison - The professional person assigned by the school in the referral process to collect all available information required by the school when a child is considered for special education.

Evaluation - Studying a particular area of a child's performance, behavior or abilities by tests or observations. Note: More than one evaluation may be done as part of an assessment.

Guardian - The person who has the legal authority to make decisions or consent to services for another person. Except in special circumstances, the parent is the legal guardian of a minor child. A person 18 years of age or older does not have a guardian unless one is appointed by the court.

Parent surrogate - A stand in or substitute for the parent. In special education a parent surrogate must be appointed by the school to attend ARD Committee meetings when the child does not have a parent or guardian or when the school is not able to locate a parent or guardian.

Pathologist - A licensed professional person qualified to test for language or speech handicaps and to suggest or provide special teaching programs for children with speech or language problems.

Related services - As part of the program of the regular schools, students receive instruction in subjects, such as reading, spelling, arithmetic and physical education. State law defines related services as services "not instructional in nature." Federal law defines related services as those services required in order for a handicapped child ". . . to benefit from a program of special education." Under either definition, related services are the services which a handicapped child needs in order to receive an appropriate education.

Special education - This means specially designed instruction to meet the unique needs of a handicapped child. Instruction may be "specially designed" in a number of ways, such as: (1) using different ways of communicating with the student (for example, sign language); (2) teaching the child at a slower pace (for example, remedial reading); (3) changing the content of the instructional program (for example, teaching feeding skills or money management skills); (4) using a setting other than the regular classroom (for example, using a resource room); and (5) including services of specially trained teachers (for example, speech therapy).

Special services - Special services is defined in Texas law to include both special education and related services.

Important Laws, Rules & Policies

P.L. 94-142, The Education for All Handicapped Children Act of 1975 - This Act is the basic federal law which requires a free and appropriate public education for handicapped children. The law may be found in the United States Code (U.S.C.) and would be cited or referred to as 20 U.S.C. 1401. The federal regulations which have been written to implement this law may be found in the Code of Federal Regulations (C.F.R.) and are cited or referred to as 45 C.F.R. Part 121a., 42 Federal Register 42475 (published August 23, 1977). The Code of Federal Regulations and the United States Code are available in most law libraries and many public library main branches.

Section 504 of the Vocational Rehabilitation Act of 1973 - This is the basic federal law which prohibits discrimination against any qualified handicapped person in any program or activity which is receiving federal financial assistance. The law may be found in the United States Code (U.S.C.) and is cited or referred to as 29 U.S.C. 794. The Department of Health, Education and Welfare Regulations which implement Section 504 may be found in the Code of Federal Regulations (C.F.R.) and is cited or referred to as 45 C.F.R. Part 84, 42 Federal Register 22676 (published May 4, 1977).

Policies and Administrative Procedures for the Education of Handicapped Students - This book contains the special education policies and rules adopted by the Texas State Board of Education. It is the basic document used by school attorneys, superintendents and directors of special education to ensure that school districts implement a program of special education which complies with state and federal laws. Sections 3571-3573 of this document outline policies and procedures for special education programs throughout the state. Section 4121 of the document contains the state policy for funding special education programs in Texas. Copies of this document may be available at the offices of directors of special education; copies may be obtained from the regional education services centers or from the Texas Education Agency. There will be a charge for these copies.

Section 16.104, Texas Education Code - This is the basic Texas law regulating special education programs for handicapped children. It may be found in Vernon's Texas Codes Annotated and would be cited or referred to as TEX. EDUC. CODE ANN. § 16.104 (Vernon Supp. 1979). Copies of this law may be located in most law libraries and many public library main branches.